RECORD AND BRIEFS

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No. 15-1262

In the Supreme Court of the United States

PATRICK MCCRORY, in his capacity as Governor of North Carolina, NORTH CAROLINA STATE BOARD OF ELECTIONS, and A. GRANT WHITNEY, JR., in his capacity as Chairman of the North Carolina State Board of Elections,

Appellants,

v.

DAVID HARRIS and CHRISTINE BOWSER,

Appellees.

On Appeal from the United States District Court for the Middle District of North Carolina

JOINT APPENDIX VOLUME V

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[229] STATE OF NORTH CAROLINA COUNTY OF WAKE IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION

11-CVS-16896

MARGARET DICKSON, et al.,

Plaintiffs,

vs.

ROBERT RUCHO, et al.,

Defendants.

NORTH CAROLINA STATE CONFERENCE OF BRANCHES OF THE NAACP, et al.,

Plaintiffs,

vs.

THE STATE OF NORTH CAROLINA, et al.,

Defendants.

11-CVS-16940
(Consolidated)

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TRANSCRIPT OF PROCEEDINGS

The above captioned cases coming on for hearing Wednesday, June 5, 2013 Special Civil Session of the Superior Court of Wake County, Raleigh, North Carolina, before the Honorable Paul Ridgeway, the

Honorable Alma Hinton and the Honorable Joseph Crosswhite, Judges presiding, he following proceedings were had:

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[233] (The Special Session of the Superior Court of Wake County continued on Wednesday, June 5, 2013 before the Honorable Paul Ridgeway, the Honorable Alma Hinton and the Honorable Joseph Crosswhite at 9:02 a.m.

JUDGE RIDGEWAY: Good morning. Welcome back, ladies and gentlemen. I believe we were at a point yesterday asking whether the whether there was evidence for the Defense. Is there anything further from the Plaintiff?

MR. SPEAS: No, Your Honor.

JUDGE RIDGEWAY: All right. Very good. Let's turn then to the Defense.

MR. FARR: Thank you, Your Honor. The Defense would like to call Dr. Thomas Hofeller.

WHEREUPON, THOMAS BROOKS HOFELLER, PhD, was called as a witness, having been first duly sworn, and testified as follows:

JUDGE RIDGEWAY: Okay, Mr. Farr.

MR. FARR: Thank you, sir.

DIRECT EXAMINATION

BY MR. FARR:

Q. Could you please state your name.

A. Thomas Brooks Hofeller.

Q. And where do you reside?

A. I reside at 7119 Marine Drive, Alexandria, [234] Virginia.

Q. All right, sir.And could I ask you, there's a there's a notebook up there, a little black notebook that says "Defendants' Identification of Witnesses and

Exhibits." Would you please turn to Tab 1, which would be Defendants' Trial Exhibit 1.

A. Yes.

Q. And could you tell the Court what that is?

A. That is my resume.

MR. FARR: And, Your Honors, just one question about this to speed up the testimony, I don't propose to go through all his experience and background, unless you want me to.

Q. But do you what's your higher education experience?

A. I have a bachelor's degree from Claremont McKenna College, an MA and a PhD from Claremont Graduate University.

Q. So may I call you "Dr. Hofeller" during the course of this examination?

A. Certainly.

Q. Dr. Hofeller, thank you. Since that is what I call you normally anyway, that will be more comfortable for me.

Dr. Hofeller, could you tell the Court what [235] your experience has been in in general in the area of redistricting?

A. Well, I actually first got my redistricting experience in California in 1965 in preparing a database for the State of California which was reacting to the One Person, One Vote rulings of the Supreme Court and had to redistrict at the State Legislative Chambers.

Q. What year was that?

A. 1965.

Q. And could you in general just tell the Court about your other experiences in redistricting since 1965 through the present?

A. Well, I've, of course, been active in the redistricting process in the last five decennial census redistricting processes doing work at the Rose Institute of State and Local Government at Claremont McKenna College in the '70s. I was cofounder of a company which assembled a database and did redistricting plans for the California State Legislature in 1970 and '71.

I worked in several other states during that period of time. I worked in the State of Mississippi in Connor v. Finch in 1970 '78 for the Mississippi State Legislature, was trying for the third time to get the redistricting right, which they did at successfully at that period of time. I did work in many other states in [236] the '80s, including North Carolina, testifying in the *Gingles* case. I have testified in Illinois cases, in the City of Chicago in city council cases. I've testified in the *Shaw* case and have been active in North Carolina since that time, since *Gingles*.

Q. All right. So you have background in redistricting in North Carolina and the demographics of the State of North Carolina?

A. I do.

Q. And do you have any experience drawing redistricting maps?

A. Yes.

Q. Could you tell the Court a little bit about that?

A. I'm – I'm sorry. Do you mean in North Carolina or–

Q. In general.

A. in general?

I've – I've drawn many plans in North Carolina over the decades, and I've also drawn plans across the nation in many, many states.

Q. Okay. Now, Dr. Hofeller, were you ever engaged by the General Assembly of North Carolina during the 2011 redistricting cycle?

A. I was.

[237] Q. And will you tell me the purpose of your engagement?

A. Well, my first engagement with the General Assembly, actually through your office, was in database work preparing – helped – helping the legislative staff to prepare a database. They were a little bit behind in their database building work, and I had some technical discussions with their staff and helped move that process along so that the General Assembly could meet its redistricting schedule.

I was then retained to essentially be the – the gatekeeper and lead technical person, map drawer, in the creation of the three Chambers – the two Chambers plans and the Congressional plan.

Q. Okay. And when you say "built" the database, would you tell the judges briefly what you meant by what – what went into the database?

A. Well, the – the census data is – is easy because the census data comes from the U.S. Census Bureau. It's in a form that is built for redistricting specifically. The problem is, is that election history and

registration data is also required for redistricting. And these databases do not come from the federal government. They have to be constructed on a state by state basis. Sometimes they're constructed [238] privately. In this case, the main responsibility is in the hands of the legislative services organizations in North Carolina.

However, the problem is, is that these election databases are for multiple years. And so those years have those – years' data, both the registration and the election data, have to be reconciled and put into one single database that covers all of the years. There also has to be primary data collected which is required for racial bloc voting analysis.

Q. All right, sir.And so is – is it fair to say that you were involved in building the database and that you were responsible for making sure the – the redistricting maps were drawn in a manner that would be approved by the General Assembly?

MR. SPEAS: Objection to the form. It's a leading question.

JUDGE RIDGEWAY: Overruled. I'll allow it as a threshold question, but...

MR. FARR: Thank you.

A. Well, it was important to get the databases built and built right and built completely. And I advised really on that rather than actually technically building them myself.My main responsibility was to ensure that the plans were built legally and to inform [239] the leadership of what was – what was possible to draw and, as I said, to become the gatekeeper; to make sure that the plans pressed forward, were kept track of; that there was a – an official plan that was the plan

into which any ideas or changes were made and to do it in a time frame which would allow the General Assembly to enact the plans; to get them precleared by the justice department and have them in the hands of the individual county election officials in time to determine where each voter lived district wise and to be prepared to begin the primary election cycle.

Q. And who was the decision maker, Dr. Hofeller, about what plans would be released to the public or inactive? Is that you or was it the General Assembly?

A. Those decisions were policy decisions, and all of those policy decisions were the purview of the General Assembly.

Q All right, sir. And do you understand what if I if I say a "racial polarization study," do you understand what that means?

A. I do.

Q. Were you ever asked to perform a racial polarization study?

A. I was not.

Q. Do you know why you were not asked to perform a [240] racial polarization study?

A. Absolutely. Because, first of all, a policy decision was made that others would do those polarization studies, and there simply wasn't time enough for me to do those studies and to do what was necessary to bring the plans to completion. That was a very big job and that was what I was hired to do.

Q. All right, sir.And you've told the Court that you had redistrict – pas redistricting experience in North Carolina.

A. I did.

Q. And when – when you began drawing maps, did you have any assumptions about whether racial polarization existed in the State of North Carolina?

A. I did.

Q. Could you explain what those assumptions were and why you had those assumptions?

A. Well, first of all, I had several decades of previous experience in North Carolina. And in my experience in North Carolina, racial polarization was also deemed to have been present. And I had never seen any studies to the contrary during that time period; and, indeed, I would have operated under the assumption that it was present this time, too. That was later confirmed by studies which were presented by other experts which [241] confirmed that and also by testimony that was given before hearings.

Q. Did you have any familiarity with redistricting plans that had been enacted in North Carolina from the 1980s through the 2000s?

A. I did.

Q. Did – did those plans inform you at all in terms of your assumptions about the presence of racial polarization in North Carolina?

A. They did. And I was also mindful of the minority districts that were created in previous plans, particularly after *Gingles*, where they were located and how they were comprised.

Q. And did you ever have a chance to review alternative plans presented by Democrats or – or the Southern Coalition for Social Justice or AFRAM during the 2011 redistricting process?

A. Well, there was really only one set of plans that was presented during the process, and that was the AFRAM plans. The other plans came in at the very last minute and really didn't inform the district building process. The districts were all but finalized before those plans came out from the other side.

Q. Was there anything about those plans that further informed your opinion about whether racial [242] polarization existed in North Carolina?

A. Well, I noted that many of the districts were created with 50 percent majority districts, and districts were located in the same places that the General Assembly's enacted plan placed the districts.

Q. All right. Thank you.

I want to move to a different topic now, Dr. Hofeller. I want to ask you about your recollections about how the 2011 Congressional District 12 was created, and I want to refer you and the Court to a map that's in front of you that's been marked Defendants' Trial Exhibit

15. Do you – do you have that map?

A. I do.

Q. Do you know what that map is?

A I believe that's a map of the previous plan, the one that was enacted in the last decade.

Q. All right, sir.And do you have the Defendants' Trial Exhibit 16 in front of you?

A. I do.

Q. Can you tell the Court what that is?

A. That was Rucho Lewis Congress 3, which was the enacted plan this decade.

Q. All right. And are you familiar with the decision by the U.S. Supreme Court in a case called *Cromartie* versus Hunt or *Cromartie* versus Hunt?

[243] MR. FARR: Alec, sorry.

A. I think I'll use "*Cromartie*."

There had been a lot of – of court activity surrounding the 12th District, and this was a district which was redrawn to be a politically drawn district with the use of political data. And that was the justification that's often called "the *Cromartie* Defense" for that district.

Q. And was the – was the district at issue in *Cromartie* taken to the U.S. Supreme Court?

A. Several times, I believe.

Q. Was – was the – did the – ultimately did the – did the Supreme Court accept the political justification or reject the political justification for *Cromartie?*

A. As it – there was – the General Assembly was successful in the *Cromartie* case with the political justification, which was approved by the U.S. Supreme Court.

Q. Now, in drawing Congressional District 12, who did you receive your instructions from?

A. I received the instructions from the General Assembly.

Q. And what were your instructions?

A. Well, everybody was well aware that the – the [244] 12th was not a – a VRA district. It was a political district and it was drawn for political reasons, and that that would be the only legal way to draw that

district in this particular redistricting cycle. There was no doubt expressed by anybody that that was to be the way it was to be handled.

Q. All right, sir.And could you turn to Defendants' Trial Exhibit 8, which is in the black notebook?

A. Okay.

Q. Could you please tell the Court what that exhibit is?

A. If I have the right exhibit, it's – there's no exhibit sticker on it.

Q. It's – it's Tab 8 –

A. Okay. Well –

Q. – which means it's Defendants' Exhibit 8.

A. I think I actually have the wrong map. Sorry.

MR. FARR: May I approach the witness, Your Honor?

JUDGE RIDGEWAY: If you'll approach, Mr. Farr.

JUDGE HINTON: Yes.

A. Well, I think I have

Q. Let me just check.

[245] A. Sorry. My eyes aren't all that good, actually.

Q. Did you prepare this exhibit, Dr. Hofeller?

A. I did.

Q. Could you tell the Court what it is?

A. It's a – a set of two maps showing the district passed in 2001 and the district as it was passed in 2011.

Q. Can you tell from this exhibit the counties the – the two districts are located in?

A. Yes.

Q. Could you tell the Court which counties those are?

A. The district – it starts out in the north end in Forsyth and Guilford Counties and transits through Davidson, Rowan, and Cabarrus down to Mecklenburg. The district is – the primary population centers in the district are Forsyth, Guilford and Mecklenburg Counties.

Q. I'm sorry. Is that – is your – is that your testimony for both districts?

A. Yes.

Q. Okay. So did you – are – are both districts in the same six counties?

A. They are.

Q. And you have a – for the 2001 district, there appears to be a line traversing the district and there's [246] an entry "95 miles." What does that mean?

A. That is what I believe to be the longest distance between two points of – of the district. In – in the 2001 district, it was 95 miles. In the 2011 district, it was 100 miles; five miles' difference.

Q. Okay. And, Dr. Hofeller, stepping back for a second, you say you received your instructions from the General Assembly. Were there any particular members of the General Assembly that you dealt with more than others?

A. Yes.

Q. And who were they?

A. That was the chairmen of the two redistricting committees.

Q. And who were they?

A. Bob Rucho and David Lewis.

Q. And "Bob Rucho" is Senator Rucho?

A. I'm sorry. Yes.

Q. And –

A. And Representative Lewis.

Q. All right. Now, were you given any particular political goals for redrawing the 12th District in 2011?

A. Well, the political goals were – they were political goals, but the whole plan was a political plan and there were political goals for the whole plan. So it [247] is really impossible to understand the context of the – the 12th District without understanding the rest of the plan. But the goals for the 12th District were to draw it in such a manner that it would increase Republican opportunities in the surrounding districts.

So in the drafting of that plan, the idea was to take VTDs or precincts, as you might characterize them, that had the highest percentage of Obama vote and to make the district as Democratic as possible, to take Democratic strength out of the surrounding districts and to take it out of the surrounding districts in such a manner that it would suit the other political goals of the – the drafters in the surrounding districts.

Q. So could you explain what – what some of those surrounding districts were and what the goals were for those districts?

A. They were the – the 6th, the 8th, the 9th, and the 5th.

Q. And what was the intent for those surrounding districts?

A. Well, again, it was to maximize the Republican political opportunity in all those districts. Do you want me to be more specific?

Q. Sure.

A. Okay. Probably the weakest GOP district in – [248] in the plan was the 9th District in Mecklenburg County. The new plan was devised with about 100,000 more population in the 12th in Mecklenburg County to take heavily Democratic precincts out of the 9th. The 6th District was changing its location markedly from one plan to another, and one of the goals was to, again, take Democrats out of Guilford County in the 6th and put them in the 12th.

Whereas the strongest district going into it was the 5th, so less Democratic precincts needed to be included in the 12th for the benefit of the 6th and the 9th.

Another thing that was required, as I think everybody knows – well, not everybody – is that Congressional maps have to be drawn with 0 deviation. There is no give at all in the deviations of the district. It's – many people have said redistricting is like a – a balloon where you push in at one point, it goes out at another point. I would characterize it more as being like a water balloon because there's no compression of water; so where you push on one side, you have to push on another.

And there were protracted negotiations in the – with the Republican Caucus in particular about the – the boundaries between the surrounding Republican [249] districts; and, also, the population figures were different in 2011 than they were in 2001. And so in

order to balance the populations out and to achieve the political goals and to meet One Person, One Vote given the context of those lines, the corridor through which the district – the 12th District transits from Forsyth, Guilford to Mecklenburg County had to be moved farther towards the southeast to accommodate those population goals.

Q. All right. Now, what was the software program that you used to draw these districts?

A. The software program was Maptitude for Redistricting engineered by Caliper Corporation, a firm located in Boston – well, not Boston, but in the Boston area; Newton, I think.

Q. All right. And do you know what a "thematic" is?

A. A thematic display in the terms of a Geographic Information System, which is essentially what the redistricting system was based upon, is a – a system which displays maps and connects those maps with data which is related to the units of geography that are in the GIS system.

So a thematic is one way of displaying that information on the screen usually by color according to [250] some piece of – series of data on one item in the database that's connected with the GIS system. In this case, in redistricting, they're usually percentages of one kind or another.

Q. Okay. And do you recall when you were drawing this map the thematic that you had on your screen when you were drawing the district?

A. I'm sorry. Did I just –

Q. Did you have a particular thematic on your screen when you were drawing this district?

A. The 12th?

Q. Yes.

A. Yes. It was a – a political thematic.

Q. Could you tell the Court what that was?

A. It was the percentage of vote that President Obama received of the two party vote. So it was computed by dividing the Obama vote by the sum of the Obama and the McCain vote.

Q. And – and so why were you doing that?

A. Well, because that was what we were using as the political thematic for drawing these districts. It was used in the other districts in the map, too, as the primary thematic.

Q. And what

A. It was, after all, a politically drawn map.

[251] Q. And what – what unit of geography were you applying to that thematic?

A. For the most part – and particularly in the 12th District outside of the 1st District, actually – it was VTDs.

Q. And what are "VTDs"?

A. A VTD – sometimes called a Vote Tabulation District; but, actually, a voting district officially by the Census Bureau – is created for the Census – I'm sorry – by the Census Bureau for the states specifically for redistricting use. States send back either maps or electronic files which indicate where their election precinct boundaries are, and those boundaries are incorporated into the Census Bureau's geographic hierarchal structure actually called "TIGER," a

TIGER file. It's an acronym. And the Census Bureau releases a – a set of summary data for each VTD.

Q. Okay. So you were looking at VTDs with information on your thematic from which you could determine the Obama or McCain vote in that particular VTD.

A. Actually, it was just the Obama vote; but by the inverse, you knew what the other one was.

Q. Okay. Now, did you – did you have to divide any VTDs in drawing this district?

[252] A. I did.

MR. FARR: May I approach the witness, Your Honors?

JUDGE RIDGEWAY: Yes, sir.

Q. Dr. Hofeller, I've just given you an exhibit that we've marked as Defendants' 14. Did you prepare that exhibit?

A. I did.

Q. Could you tell the Court what that is?

A. That is a listing of the split VTDs in the 4th District and in the 12th District in the enacted plan showing the – the populations in the plan. I could explain the columns going across.

The first is the county in which the VTD is located. Second is the VTD itself, and you'll notice that there are two listings for each VTD that's on one side or the other side of the split. The next column is the district number. I've shaded the district numbers green for splits that involve the 4th CD and orange for the splits that involve the 12th Congressional District.

The next column is the population in the split itself; so there are two numbers, one for one side and one for the other. The next column is the population of the whole VTD if it were unsplit, and the next column is the percentage of the population in the whole VTD which [253] was located in each split side.

Q. And the last column – Dr. Hofeller, you have that last column shaded in different colors. Could you explain?

A. I do. The – the green – I'm sorry – the blue indicates splits that were done for population adjustment. The yellow indicates VTDs for political split for political reasons. The red indicates VTD splits for district contiguity or compactness.

Q. All right. So let's – let's start at the bottom and talk about the divided VTDs in – in the 12th Congressional District and let's start with Mecklenburg.

A. From the very bottom.

Q. Yes, sir. We're going to work from the bottom up.

A. There was one precinct split in Mecklenburg and that was a split which added 17 people for the 12th District which was a population adjustment split.

Q. Now, tell – why do you – explain to the Court why you have to make population adjustments, please.

A. Well, again, there's– there's no give on the – on the population deviations in the Congressional Districts. They all have to be at 0 or plus or minus 1 depending on how the State's population is divided when it's divided by the number of districts. So [254] adjustments have to be made at the boundaries of all the districts in order to equalize those populations.

Q. Is it fair to say you're equalizing the population between the two adjoining districts with these splits?

A. Yes.

Q. All right. Now, let's go to the next divided precinct, which appears to be in Guilford; and I think that's Jamestown 3. Could you explain to the Court why you made that divided VTD?

A. Again, that was the same reason as the split in – in Mecklenburg County; that was a population adjustment.

Q. And that was between which two Congressional districts?

A. Between District 6 and District 12.

Q. Okay. And – and then can we move to the next divided VTD in Guilford, which appears to be Guilford 64.

A. Guilford 64 was a split of the precinct that was done to bring the incumbent in the 6th into the 6th as the – the plan was transiting through Guilford, through that precinct. So it was, in essence, a political split, but it was an incumbent seat.

Q. All right. And who was – who was that incumbent?

A. I – I believe – I'm sorry. I'm just having one of those...

MR. FARR: Do you mind if I ask him, Your Honor?

Q. Is it Howard Coble?

A. Yes. I'm sorry.

Q. Okay. And if you had not made that division of that VTD, which district would have

A. He would have been in the 12th.

Q. All right. Let's go to the next division in Guilford, which appears to be Guilford 60.

A. Again, Guilford 60 was split for population adjustment reasons.

Q. And what were the two districts impacted?

A. 6 and 12 again.

Q. And then the next division is in Guilford 46?

A. Yes.

Q. Would you explain that.

A. Another population adjustment. What happens when a plan is being finalized, often in re redistricting, it's – in Congressional maps, it's referred to as zeroing out the districts. So until the districts are really pretty much settled, it' – it's not fruitful to be zeroing out the districts. So you would see a redistricting person going around the [256] perimeter of the district and trying to find the appropriate bloc – the blocs with the appropriate population or populations to hit that 0 mark. And there indeed might be other ways to do it, but that's the way it was done in this district.

Q. All right. Dr. Hofeller, then, there appears to be one final divided VTD in the – the 12th District in Davidson. Could you explain that division, please?

A. Well, precinct 10 comes extremely close to bisecting the district. So I actually took off a – a portion of the western extremity of that precinct and put it into District 12, 130 people, so that that corridor would be a little wider.

Q. All right. Now, in drawing the 12th District, is there a thematic on the Maptitude software for race?

A. No.

Q. There is not?

A. I'm sorry. Was there?

Q. Is there – is there a thematic on the Maptitude consistent for race?

A. Well, you can create any thematic you want.

Q. Okay.

A. So it's possible to draw one for – for any – any factor that's in the database –

Q. All right.

[257] A. – including race.

Q. When you were drawing Congressional District 12, were you looking at any racial data?

A. There was no thematic racial data displayed.

Q. All right. And were you here yesterday for Congressman Watt's testimony?

A. I was.

Q. Do you recall his testimony about what Senator Rucho stated to Congressman Watt about what Senator Rucho had been told by leadership to ramp the black percentage of District 12 over 50 percent?

A. I did.

Q. Did Senator Rucho ever instruct you to draw this district so that it would be over 50 percent in total black voting age population?

A. Absolutely not.

Q. Did he instruct you that it be over 50 percent in any sort of black category?

A. Absolutely not.

Q. All right. Could you turn to our black notebook again and turn to Tab 12 – Are you at Tab 12

A. I'm at Tab 12.

Q. – which is Defendants' Trial Exhibit 12? Did you prepare that chart?

A. I did.

[258] Q. Would you tell the Court what that chart is?

A. That's a chart of the Minority Census Data in several of the plans drawn in Forsyth County.

Q. I'm sorry, Dr. Hofeller. I've got you on the wrong exhibit. We'll get to that later. Turn to Exhibit Tab 11.

MR. FARR: My apologies, Your Honors.

A. Tab 11 is minority and presidential election statistics for the enacted 2011 12th District and a demonstration plan I have drawn, which I call the "High Obama Vote Plan" showing the – the differences between the two plans politically and demographically.

Q. Okay. So what is the – just the – the – the main difference between the way you – you drew the 2011 enacted plan and the High Obama Vote Plan?

A. Well, as I stated before today, the goals of the enacted plan were political, but they were political in the sense that it was important which – and precincts were taken from each of the major counties and which districts they were either taken or given to the surrounding Republican districts.

In the High Obama Vote Plan with the exception of the – the corridor through the three counties, I put up

thematic – the political thematic again with a break on the Obama percentage which took the very highest Obama [259] precinct votes from all of the three major counties, notwithstanding what would be the political effect on the surrounding Republican districts.

Q. Okay. So could you tell – explain to the the Court the chart that's at the top of that page, could you explain the columns that are in that chart?

A. Yes. First is the plan name. Second is the total population of both – both districts, which of course had to be the same because the High Obama – High Obama Vote Plan is a complete plan of the –for the whole state. The deviation, again, which I probably didn't need to put it in because it's 00. The adult non Hispanic/white percentage, the adult total black percentage, the adult non Hispanic total black percentage, the adult Hispanic percentage, and the difference between the total black percentage and the total non Hispanic/white percentage.

Q. All right. Dr. Hofeller, could you explain give a little more detail to the Court about these categories that you just described? Are – are these census categories?

A. All of them – well, except – with the exception of the last column, those are all data which are found in the TIGER file – not the TIGER file – the Census Bureau's redistricting data file.

[260] Q. All right. So starting with the percentage 18 plus non Hispanic/white, can you put that in – in English to what that means instead of the census acronym?

A. Well, I guess the easiest way to say it is that Hispanic is an ethnic identification and everybody

identifies his or herself ethnically. And a majority well, in – in – in most redistricting instances, one is looking at Hispanics and blacks.So some African Americans identify themselves as being ethnically Hispanic. A good example of that would be Puerto Ricans who speak Spanish as their – their native tongue if they've come – if they live and have come from Puerto Rico.

So the – it's important to differentiate that from total white population. It gives a truer indication of what we would normally say the white voting strength is in the district.

Q. And – and when it says "18 plus," is that the same as saying "voting age"?

A. It is.

Q. All right. And what about the next column is "18 plus total black," what does that mean?

A. Again, all of the people who identified themselves as entire – wholly black or black and any other race who were of voting age.

[261] Q. All right. And then, again, in – in English, what's "18 percent plus non Hispanic total black"?

A. Again, that – that is the group of people who identified themselves as either all or partially African American, but did not identify themselves as being of Hispanic ethnicity.

Q. And "18 percent plus Hispanic," is that the same as –

A. Again, those are all the – all the population that identified themselves as being ethnically Hispanic –

Q. And the voting –

A. – or linguistically. You could also use that term interchangeably.

Q. And it means "voting age population Hispanic," right?

A. Yes.

Q. All right. And then, again, explain what that last column is.

A. Again, it's – it's the – the – the difference between the non Hispanic whites and the total black population

Q. Okay.

A. that are voting age.

Q. Now – now, based upon that chart, is there any [262] meaningful difference between the enacted plan and the High Obama plan as to those statistics?

A. Not in my judgment.

Q. All right. Now, let's go to the second chart on that page. What – what does that chart show?

A. That looks at the – the votes and percentages for Obama and McCain in both plans. And then it, of course, shows the total two party presidential vote in the two districts. Again, it's important to note that the – there are minimal differences.

Q. All right. Now, I want to go back to something I overlooked. The – we talked about what you did when you drew the enacted 12th District and the – the VTDs you divided. When you divided the VTDs, did that change – did those divisions in the 12th District change in any significant way the political performance of that district for President Obama?

A. No.

Q. Did it change in any significant way the racial composition of that district?

A. No.

Q. All right. I want to do one more exhibit on 12. Could you turn to Tab 6?

A. Okay.

Q. Can you tell the Court what this is?

[263] A. That's a detailed map of the enacted 12th District showing major highways and VTDs and shading the surrounding districts.

Q. Okay. And just so the Court knows what a VTD is, could you take, say, Mecklenburg County and – well, first let me say, are the VTDs identified by a number?

A. Well, they're identified by what we would call a alphanumeric depending on how the county names their precincts. So up in Guilford County, you could have a alpha designation followed by a number. In other counties, they're just numeric. So it –

Q. Okay.

A. – depends on the naming system within each individual county.

Q. All right. Let's go into Mecklenburg County. Could you just point out for the Court a couple of numbers or a couple of VTDs so they can see how the VTDs are designated on this map?

A. Again, my – these are very small numbers.

Q. Are you able to read it?

A. I might have a little trouble with them. There's a VTD at – at the far – well, not – kind of the nearest

VTD to Union County in District 12, which I believe is 099. It's like a test they put up on the screen when you're getting your new glasses, which I'm [264] overdue for. And there's a number inside that VTD, which is the precinct number.

MR. FARR: Okay. And I think, Your Honors, I'll just state for the record, I think he's referring to 079.

A. To what?

MR. PETERS: No. I think he's correct.

MR. FARR: It is 099? – Okay. I got it. My eyes are just as bad evidently. All right.

A. I had the numbers in larger type font on the screen when I was looking at them.

Q. All right. Now, let's turn to Congressional District 4. Can you tell the Court the instructions you received regarding the construction of Congressional District 4?

A. 4 was essentially constructed and finalized after the construction of Districts 12 and 1, and the purpose of the district was to gather in as many Obama high Obama percentage precincts into one district in the central part of the state, again, to create more opportunities for Republican candidates in the surrounding districts.

Q. Okay. Could you please turn to Defendants' Exhibit 9, which is Tab 9 in the notebook? And did you prepare this exhibit, Dr. Hofeller?

[265] A. I did.

Q. And could you tell the Court what this exhibit reflects?

A. The red area is the – is District 4 placed on a county grid, and it also has a – a line with two arrows which indicates the farthest distance between two points in the district.

Q. And – and what would that be?

A. 88 miles.

Q. All right. Now, could you turn to Tab 10, Defendants' Exhibit 10? – And did you create this exhibit?

A. I did.

Q. Could you tell the Court what this exhibit reflects?

A. Again, this is the red – the red shading indicates the 13th Congressional District was enacted in 2001 by the General Assembly, and it stretched a distance of 111 miles from the northwest tip of Rockingham County to the far eastern tip of Wake County.

Q. And – and what was that length?

A. 111 miles.

Q. Now, Dr. Hofeller, in your mind, is there any correlation between the 2011 4th Congressional District and the 2001 13th Congressional District?

A. In my mind, it was a – a – a distance of [266] some – a district of some miles, although not the largest in the – the state, connecting three population centers through less populated territory. So it essentially reached from Raleigh over to – to Greensboro probably taking route longer than the total distance from one point in the district to another.

It also, incidentally, crossed through Guilford County actually at a – a – a point – a point contiguity

where I believe you would have to shrink down to infinity – infinity small, the smallest –you couldn't go from one part of the district to the other without disappearing like in a black hole. Point contiguity is – has, I believe, been ruled to be unacceptable in North Carolina since then.

Q. Is there any sort of geometrical connection between the 2001 13th and the 2011 4th District?

A. Well, I would just characterize it in many ways as a counterclockwise rotation. Instead of going east west, the district now goes – District 4 goes north south, again, connecting population centers.

Q. Okay. And mindful of your explanation of how you drew the 12th District, would you again explain to the Court how you went about drawing the 4th Congressional District?

A. Again, it was a – a political draw. It was [267] taking – let me go back to that map – taking highly Democratic precincts as defined by the Obama McCain vote from Wake County and Orange County and part of Durham County, the part that wasn't in the 1st, and Alamance and connecting them with a large concentration of Democratic voters in Cumberland County.

Q. And, again, you are basing this on what geographic unit?

A. The VTD.

Q. And what information did you gather about each VTD?

A. Well, again, the – the thematic that I was using in drawing this district was the percentage of the vote for President Obama.

Q. All right. In drawing this District 4, did you have to divide VTDs?

A. I did.

Q. Could you turn back to Exhibit 14, please? Let's start at the top and go towards the bottom for this one. So the first divided VTD you have listed for the 4th District is in Alamance County; is that right?

A. Right. It's the 13th – V – VTD 13 in Alamance County.

Q. Okay. And

A. And it was – it was drawn as it was for a [268] population adjustment between the – the 4th District and the 6th District.

Q. And I want to make sure the Court understands this. The "Counties" states the county. The "Voting District" is 13. So that means that's the VTD 13, is that right, in Alamance County?

A. Yes.

Q. And then in district – that's Congressional district, and it's your – you're – you're dividing that precinct between the 4th and the 6th Congressional District?

A. Yes. It's the same as we did for 12.

Q. Okay.

A. And then the population of the split on each side and the whole population of the VTD and, again, the percentages of each split.

Q. So just to make sure the Court understands, for Alamance 13, 5,194 people were put in the 4th District and 235 people were put in the 6th District; is that right?

A. That's correct.

Q. Okay. And the reason for doing this, again, was...

A. The – the reason was to balance out the population between 4 and 6.

[269] Q. Okay. Now, let's go to Cumberland County. Could you go through the – the divided VTDs in Cumberland County and explain why they were divided?

A. Well, there were – there were – let's see, one, two, three – four divided precincts in Cumberland County. Again, you see that there are small populations split off from the major portion of the VTD in each case, and those were done to balance the population between the 2nd and the 4th in Cumberland County.

Q. Okay. And – and could you, again, just explain to the Court briefly we don't – I don't think we need to go through every VTD, but could you explain the divisions of the VTD in Harnett County?

A. Well, the – the – the Harnett County VTD split is a 0 VTD split, and it was done for the reason of – of making the district contiguous.

Q. All right. And then could you –

A. Legally contiguous.

Q. – could you please explain the divided VTDs in Wake County?

A. In Wake County, the – the VTD 01 33 and 01 36 were split for political reasons. 01 39 was a population adjustment. 01 02 was, again, for a political reason. 01 16 was for contiguity – or I'm sorry – for compactness.

01 18, 01 21 and 16 02 were, again, done [270] for population adjustment.

Q. Did the divided VTDs in the 4th Congressional District have any significant impact on the political performance of that district?

A. None whatsoever.

Q. Did the divided

A. If you if you saw it, it would be in the hundredths of percentages, I – I would imagine.

Q. Did the divided VTDs have any impact on the racial percentages in Congressional District 4?

A. Not any significant impact, no.

Q. Okay.

MR. FARR: All right. Your Honors, I would like to now change to a different topic, and we have some testimony on the Senate Districts in Forsyth County.

(Pause.)

MR. FARR: Whoa, whoa, whoa. What did I do wrong here? I'm handing out the wrong map – sorry. I did give you the right one. You got the right one.

You Honor, I'm missing the Southern Coalition map. I'm sorry. I don't know what happened to it.

JUDGE RIDGEWAY: I've got – I have a book of maps here, so I've got it here.

[271] MR. FARR: Okay. All right.

MR. SPEAS: Mr. Farr, do we get one?

MR. FARR: I'm sorry.

MR. SPEAS: Or two?

MR. FARR: I can't find – find the Southern Coalition map. Are there any extras? – Sorry. I'm a bad paralegal. Here you go, Judge Hinton. I'm sorry.

JUDGE HINTON: Okay.

JUDGE RIDGEWAY: That's extra.

JUDGE HINTON: Um hum.

BY MR. FARR:

Q. Dr. Hofeller, I now want to talk to you about Senate District 32 in Forsyth County. Could you identify the exhibit I've handed you marked as Defendants' Exhibit 17?

A. Defendants' Exhibit 17 is a map showing the enacted Senate districts also indicating the county groupings in the solid blue line; so the shading is for the districts, and the – the solid blue line is for the county groupings.

Q. And so, for example, could you tell the Court for the Rucho Senate 2, what county group is Forsyth County located in?

A. Forsyth County is located in a two county [272] group. And, also, the two county group contains two districts.

Q. All right. Now

A. Districts 31 and 32.

Q. What's – tell the Court what Exhibit 18 is.

A. Exhibit 18 is the Southern Coalition for Social Justice Senate plan or the AFRAM plan, and it – it has a three county group for – in which the Forsyth County districts are contained, which also has drawn within it three Senate Districts. The – the – again, the heavy

blue line indicates the county groups throughout the the plan.

Q. Okay. And in which – in both of these maps, in which county or counties is Senate District 32 drawn?

A. Senate District 32 in both maps is drawn entirely within Forsyth County, primarily Winston Salem.

Q. Okay. Now, I would like for you to turn to Tab 12 of our notebook, which is exhibit – Defendants' Exhibit 12.

All right. Now, Dr. Hofeller, what do you – do you know the – the population differences between the two county group in which District 32 is located in the Rucho Senate 2 versus the three county group that's found in the Southern Coalition plan?

A. I don't precisely remember or know the actual [273] populations of the group as a whole. I knew that in the Southern Coalition district, the population of – of the group allowed for the drafting of the three districts that they drew within that group at lower populations than was required by the two county group found in Rucho Lewis.

Q. So – so let's explore that.

A. Rucho, I think. I'm sorry.

Q. When you draw a Senate District, is there something called an "ideal number"?

A. Well, there – there are two numbers that you have to keep in mind. The first number is common to each specific set of districts – one for the – well, one for Congress, one for the State Senate, and one for the House of Representatives which is the ideal district population for the state, which is mathematically

found by dividing the total population of the state by the number of districts into which it's being subdivided.

Q. So – so to get an ideal number for a Senate District, you divide the population by 50?

A. That's right.

Q. Okay.

A. That's the ideal district size for the state. Within each grouping – the groupings being determined by the provisions of *Stephenson* – there is – would be an average district population for districts drawn within the group which would be computed, again, by dividing the population within the county grouping by the number of districts you were going to draw in it. And those two numbers would be different.

And depending on where that that average number for the group ended up in relationship to the ideal district population for the entire state, you could find yourself facing different challenges in drawing the districts.

Q. Okay. So let me see if I can put this in context. Is is it fair to say that if you took a population in the Southern Coalition plan in that three county group, that the average population for those three districts would be lower than the average population for two districts drawn within the two county group in the enacted plan?

A. That's true.

Q. Okay.

A. That, of course, would be properly caused by the most optimal compliance to the *Stephenson* county grouping criteria.

Q. Okay.

A. It's not – it's not really a choice of – of the – the map drafters.

[275] Q. And does the *Stephenson* case put any outer limits on the population deviation that a district can have in order to still be lawful?

A. You have to stay within the plus or minus 5 percent range as – as defined by the Court; a little bit different than in other states where the – the lowest district – the – the difference between the lowest district in the – drawn in the state and the highest district has to be just under 10 percent, what they call top to bottom.

But in *Stephenson*, no matter where that average population falls for the county grouping, you're still limited by that plus or minus 5 range, which is mandated.

Q. So under the population guidelines of *Stephenson*, all three districts in the Southern Coalition group have to be within plus or minus 5 of the – of the ideal?

A. Right. If I could be excused to give an example here.

Q. Sure.

A. Let's say that the – he population of your county grouping divided by the – the number of districts to be drawn in the group is extremely high. It's up at, let's say, 4.9 percent high above the ideal district population. It would be much harder to draw a larger [276] number of districts within that – that particular group. If the two numbers were closer, it would be easier.

So you're constrained. If you make one district too high or too low, you might push the other district up over the 5 percent mark, and that's not allowable.

Q. Okay. Now, turning back to your – Exhibit 12, did you make this chart?

A. I did.

Q. And could you explain to the Court what this chart represents?

A. Again, this is a comparison of – of five different State Senate plans which are named in column one with the same figures you've seen in – in the other chart that I drew. It showed the total population, the deviation – which now is, of course, above 0, because we're not talking about Congressional districts. The non Hispanic/white population, the total black population, the non Hispanic total black population, the Hispanic population, and, again, the total black minus the non Hispanic/white all for the adult voting age population.

Q. And – and, Dr. Hofeller, does this chart does it not apply to the different versions of Senate District 32?

[277] A. Yes.

Q. That's not noted on the chart, is it?

A. No.

Q. But it – but it –

A. I'm sorry.

Q. – it was intended to apply to Senate District 32; is that right?

A. Yes. They're all the 32nd Senate District.

Q. So if I can just go over this for a second. Under the 2010 Census, the – the 2003 version of Senate District 3 – 32 had a deviation of minus 8.01 percent?

A. Yes.

Q. And that would make it illegal under the *Stephenson* criteria, right?

A. Well, certainly, because it wasn't within the allowable deviation.

Q. Okay. And the enacted plan 32 had a deviation of minus 0.79; is that right?

A. Right.

Q. And that's within the *Stephenson* range?

A. Right in the middle.

Q. Okay. That's the SCSJ plan had a deviation of minus 4.37 percent; is that correct?

A. That's correct.

Q. And that's – that's at the lower range?

[278] A. It's approaching the – the lower limit, allowable limit.

Q. Okay. And then the – the Fair and Legal and McKissick possible Senate Districts appear to have the same deviation of 4.67 percent; is that correct?

A. Yes. Although I notice there, I might have been dyslexic on that deviation.

Q. Is it your understanding that they're – they're the same district?

A. They appear to me to be the exact same district.

Q. Okay. Now, let's now turn to the instructions that you received about redrawing Senate District 32.

Could you – could you keep the old version of Senate District 32?

A. Well, no. There – there – there are two reasons that we couldn't have kept it. Possibly one was that it was under – it was out of range of the ideal district deviation – allowable district deviation, plus or minus 5 percent.

Also, what would play into it is that because of the mandates of *Stephenson* and the county grouping criteria, which is really a formulaic type of – of draw, you might be limited by the – the average district size within each group.

[279] Q. Okay. Did you receive any instructions about how you should attempt to redraw Senate District 32?

A. Well, first of all, it was determined by our initial analysis of the state that there should be a – a minority district drawn within that – that county grouping similar to the district that was there in the 2003 map and that the placement of that district, which came out in the original VRA map, was known and approved by the – the General Assembly. So –

Q. Any further instructions?

A. Well, again, after the initial plan was drawn, we were informed by the plan that was presented by SCSJ, which had a higher total black population in it than the original district we had drawn. We were also informed by the fact that the 2003 Senate map for District 32 had a higher percentage.

So I was instructed to bring that percentage into line with the percentages in the SCSJ map and the original map even though that district, the – the 2003 district, had to have added population in order to meet One

Person, One Vote. That was the instruction that was given.

Q. All right. And do you have an opinion for the difference in the shape and location of the enacted District 32 as compared to the Southern Coalition for [280] Social Justice 32? – Was there anything that caused the two districts to have a different shape or location?

A. Well, again, because of the county grouping, which the SCSJ District 32 was drawn within a three county, three district group, the – it could be drawn at a much lower population. You can see, again, almost at the lowest allowable limit that districts could be drawn, which made it easier to draw the plan demographically as they drew it.

However, in the two county, two district group which was present in the enacted 2011 plan – which, again, was mandated by *Stephenson* – the districts had to be higher. And there was also a limit to the lowest population at which we could draw the 32nd District in the enacted map, because if we had drawn it significantly lower in deviation than the minus 0.79 percent to reach the – the population of the SCSJ plan, not only would we be gone – have gone out of limit – well, we wouldn't have gone out of limit necessarily, but we would have driven the adjoining district in the pair way up over plus 5; I would estimate somewhere around 9 percent.

So we were limited in the population size of the 32nd by what it would cause population wise in the 31st, which was the paired district in the cluster.

Q. So – so –

[281] A. So

Q. Go ahead.

A. So in order to obtain the population we needed and to obtain the same demographics as were in the SC SCSJ plan and the 2003 plan, we had to do – we had to go out and reach out for the – the populations that we did in drafting the plan.

Q. All right. And, Dr. Hofeller, do you recall whether the General Assembly when they first released maps, did they first release maps that only included the VRA districts?

A. That's true.

Q. All right. When you were drawing districts initially, did you have any knowledge of where the incumbents were located?

A. When I initially drew the districts both in terms of making the initial demographic analysis and drawing the and leaning towards the – the finalization of the VRA planned districts, I did not know until the very end of the process where the incumbents actually lived.

Q. Did – did Senator Rucho ever instruct you to draw Senator Garrou out of her district?

A. No.

Q. Prior to the release of the VRA districts, [282] did – did you determine that Senator Garrou was not in the district that you had drawn?

A. Yes.

Q. And did you have any discussions with – with Senator Rucho about that before the VRA districts were released?

A. Well, part of the discussions that we would have with leadership – and in this case since it's the Senate plan, it would be Senator Rucho. Prior to the release of any map, we would give a full presentation of the plan to Senator Rucho. And that would include all of the data on the plans, including incumbent residencies and possible pairings of incumbents in the plan. So there was no way we would not present the plan with – to him with all the information that was needed for him to make an informed analysis of the plan and to approve it.

Q. And after you had that discussion with him and before the VRA districts were released, did Senator Rucho tell you either to keep her out of the district or to draw her back into the district?

A. No.

Q. Okay.

MR. FARR: All right. Your Honors, I would now like to turn to Dr. Rucho – or excuse me, "Dr. Rucho." He is a doctor, by the way.

[283] Q. Dr. Hofeller, could you turn to Tab 3 in the exhibit notebook, Defendants' Exhibit 3? Could you tell the Court what this is?

A. This is a – again, a detailed map much like the detailed maps produced that we looked at before for Congressional District 12 which shows the major highways, the VTD boundaries in – in orange lined shading and the surrounding districts as they enter Forsyth County with the 32nd in yellow and the 31st in green.

MR. FARR: All right. Thank you.

Your Honors, we're now going to turn to some testimony on the Chatham County/Lee County plan.

And because of my abysmal ineptitude in handling the exhibits, I've asked Mr. Peters to hand the exhibits out.

MR. PETERS: If I may approach.

JUDGE RIDGEWAY: Yes.

BY MR. FARR:

Q. Okay. Dr. Hofeller, do you have the – wait. Excuse me. I'll wait until all the maps are handed out.

(Pause.)

Q. All right. Dr. Hofeller, you have Defendants' Exhibit 19.

A. I do.

Q. Can you tell the Court what that is?

A. That is a map of the House districts in the [284] Martin House Fair and Legal plan, which shows the districts – the House districts colored and which shows the boundaries of the county groups for the plan in dark – heavy dark blue lines.

Q. Okay. And do you do you notice the county grouping includes Lee County?

A. There's a three county group of Chatham, Lee and Harnett, which is also containing three districts.

Q. Okay. And could you now turn to Exhibit 30 – 20 – excuse me – and tell the Court what this is?

A. This is a – again, a map of the Lewis Dollar Dockham 4 or enacted House of Representatives plan, again, showing the districts shaded in colors and the county group shaded or lined in heavy dark blue, which also indicates that it created a – a three county grouping in Harnett, Lee, and Chatham with three

districts. So the county groups in both plans were identical.

Q. All right. And – and in comparing the – the three county group in the Martin House Fair and Legal versus the Lewis Dollar Dockham plan, is it fair to say in the Martin House plan, there are two whole counties?

A. Yes.

Q. All right. And is it fair to say that in the Lewis Dollar Dockham plan, there's only one whole county, [285] that being Chatham County?

A. Yes.

Q. In the Martin House Fair and Legal plan, Chatham and Lee are maintained as whole counties; is that correct?

A. Yes.

Q. Now, can you explain to the Court what a "traversal" is, as far as you understand it?

A. A traversal is –

MR. SPEAS: Objection, Your Honor. This is not relevant to the two issues in front of the Court.

JUDGE RIDGEWAY: Overruled.

A. A traversal is the crossing of a county line to connect to a portion of that county from an adjoining county.

Q. All right. And can – can – how many traversals, as you understand the term "traversal," are found in the Lewis Dollar Dockham plan in this three county group that includes Lee County?

A. Two.

Q. Could you point the Court to what you consider to be a traversal?

A. The traversal is the extension of District 54 into Lee County and the extension ofwell, the connection, actually, of Districts 51 and 53 across the [286] Harnett/Lee line.

Q. Okay. So District 51 is – is – is created by a traversal of the Harnett and Lee County line; is that right?

A. Yes.

Q. Okay. Can – when you look at the Martin House Fair and Legal plan, how many traversals are there in this county grouping?

A. Two.

Q. Could you explain to the Court what you believe to be the traversals in this?

A. Again, there's the traversal of District 56, I believe; am I seeing that clearly?

Q. That's– that's correct.

A. Okay. Sorry – across the Chatham/Harnett line and the traversal of District 53 across the Lee/Harnett line.

Q. So is it fair to say that there's a same number of traversals in both of these county groups?

A. Yes.

Q. All right. Now, could you tell the Court the instructions that you received in terms of drawing the districts in the – the three county group including Lee County in the Lewis Dollar Dockham plan?

A. Well, first of all, we're going to draw a [287] district wholly within Harnett County. And next –

Q. Excuse me. You're going to do what? I didn't hear you.

A. An entire district within –

Q. Okay.

A. – Harnett County.

Q. Okay.

A. And – and, secondly, Chatham County was to remain whole. We – we surmised that District 54 was going to be a Democratic district. And, also, we were mindful of – of the fact that the then Speaker of the House had a residence in Chatham County and was also doubled up – or the term they use in North Carolina is "double bunked" – in – in Orange County, and we felt that that should be made into a – a stronger Democratic district, so we reached down into Lee County to find Democrats for the Chatham County district.

Q. All right. Now, could you please turn to Defendants' Tab 4, Defendants' Trial Exhibit 4? Can you tell the Court what that is?

A. That is a map of the Lee County portion of – of District 54 and also a part of the – of District 51 in Lee County – County. Excuse me. It shows the 54th in yellow, the 51st in pink. It shows also the VTD boundaries of Lee County. It actually could have shown [288] the boundaries of the portion in Chatham, too, but it probably is all in one VTD.

Q. All right. Dr. Hofeller, do you see that big white notebook that's up there, up next to you? Could you turn to Plaintiff's Exhibit 7?

A. Yes.

Q. Now, do you know what that exhibit represents?

MR. FARR: May I approach, Your Honor, to make sure –

JUDGE RIDGEWAY: Yes, sir.

MR. FARR: he's got the right one?

Q. That's it.

A. Yeah, I have it.

Q. Okay.

A. I'm sorry.

Q. Does that – does that exhibit show the precinct – the VTD lines in Lee County?

A. It shows a portion of Lee County, a little less detailed than the map we just looked at. It shows the

VTD lines shaded in heavy blue, the district boundary in red, and looks at, I believe, the percentages of – of black VAP I don't know whether that's 18 year old or just total population – in each of the VTDs.

Q. Well, and my question is: Does it show the VTD lines?

[289] A. It does show the VTD lines. I'm sorry.

Q. And do you know how many VTDs there are in Lee County?

A. I believe there are five.

Q. And how would you describe them?

A. And they're – they're extremely large VTDs, even by North Carolina standards which has unusually large precincts as compared to a lot of them

across the nation. I believe one of the – the VTDs is over 18,000 population, which is very, very high, which would give anybody drawing any type of district within that county a difficult time following VTD boundaries.

Q. All right. Now, how many – how many VTDs include the City of Sanford in Lee County?

A. I actually believe that all of them touch a portion of Sanford, although one of them is just a very, very, very small piece. So certainly four of them go through the City of Sanford.

Q. Okay. And so that if – if you included the entire City of Sanford in a district, that would split four or five VTDs by doing that, correct?

A. Yes.

Q. All right. Now, I want you to turn back to our Exhibit 5 – it's 4. So let me know when you have that, Dr. Hofeller.

[290] A. I have it.

Q. All right. I want you – I want you to focus on part of this exhibit that shows how District 54 was drawn into Lee County, and I wanted to ask you: How did you come to make this draw for House District 54?

A. Well, once again, as I said before, the idea was to find highly Democratic portions of Lee County to include in District 54 because District 4 was intended to be drawn as a Democratic district. So trying to find that out, I – as in many cases in these maps – was instructed by local knowledge of these areas and was essentially told that the strong Democratic

MR. SPEAS: Objection. Clearly hearsay.

JUDGE RIDGEWAY: I'm going to allow it as the basis of this expert's opinion on this matter.

Go ahead, Mr. Farr.

MR. FARR: Thank you, sir.

A. I'm sorry. I –

Q. What – what – what –

A. That the Democratic – the highly Democratic areas of Sanford were found in the central portion of the city.

Q. Okay. Now, what the Court has allowed you to testify on, Dr. Hofeller, is: Explain why you drew these lines and why you thought these were the Democratic areas [291] of Sanford.

A. Because the – the people who were sitting by me when I drew the map told me that those were the highly Democratic areas.

Q. Okay. And did the large size of the VTDs render it impossible to determine where the Democratic voters resided simply by relying on VTDs?

A. Yes.

Q. Okay. When you drew this map, did you have any racial data up on your screen?

A. No.

Q. Did you get any instructions from any of the – or from Representative Lewis or anyone else that you should consider racial data in drawing this district?

A. No.

MR. FARR: All right. I have one more question, Your Honors, that I overlooked.

MR. PETERS: We have a couple more.

Q. Could you turn to in our black exhibit notebook Tab 5? Can you tell the Court what this is, Exhibit 5?

A. Exhibit 5 is a detailed – more detailed map of Rucho Lewis Congress 3 District 4, the Congressional – 4th Congressional District in the enacted plan showing the 4th District and the surrounding district in colored shading – which would actually be a thematic – and [292] county lines and VTD lines in a rather thin red line and major, major roads with VTD numbers on the VTDs.

Q. All right. Now, could you turn to Tab 7?

A. Yes.

Q. And did you did you prepare this exhibit, Dr. Hofeller?

A. I did.

Q. And could you tell the Court what this is?

A. This is a – a – a – a map of the Stein 13th Congressional District shaded in red.

Q. And did you have a – a diagonal line drawn on this particular map?

A. Yes.

Q. And what's the purpose of – of that line?

A. It shows the boundary – the boundary line that – the farthest reach of the district.

Q. And, Dr. Hofeller, is it your understanding when you say the "Stein 13th Congressional District," is that also known as the 2011 Fair and Legal Congressional plan?

A. Yes.

Q. All right.

JUDGE RIDGEWAY: Mr. Farr, if you're going to begin with a new district, we're going to take a break before you do that. Are you finishing up with a district [293] already talked about or are you about to change?

MR. FARR: I just have one more exhibit to talk about.

JUDGE RIDGEWAY: Okay. Go ahead.

MR. FARR: It should take five minutes or less, then I'll be finished.

BY MR. FARR:

Q. Okay. Could you turn to the Plaintiffs' white exhibit notebook and turn to Tab 9? Now, have you – have you seen this exhibit before, Dr. Hofeller?

A. Yes.

Q. And do you understand this is an exhibit that has been prepared by a witness for the Plaintiffs named Chris Ketchie?

A. Yes.

Q. Can – can you again tell us what the goals were for the Legislature in creating the enacted District 4? There were two goals.

A. Well, again, the goal was to draw the – the most Democratic district that could be drawn for District 4 to make the surrounding districts better for Republican candidates.

Q. All right. And – and in looking at Exhibit Plaintiffs' Exhibit 9, can you offer an opinion as to whether if the Legislature had enacted this district they [294] would have accomplished both of the goals that they gave you for drawing the enacted District 4?

A. No.

Q. And why – why can't you render an opinion on that?

A. Well, I mean, there – there are two reasons. One, I – I know that – that the District 4 as enacted was the – the best configuration that we could find. And, number two, this map is just one district in both cases. So you have to place a district in context in the whole plan and the goals of the whole plan when you look at it. This – this often happens in redistricting when people – members, public – many people submit a map and say "This is what I want this single district to look like" without either showing or having taken into consideration the way that district would fit into the rest of the state.

Q. So in looking at Exhibit 9, can you form an opinion on whether this variation in District 4 would have the same impact as the enacted District 4 of making adjoining districts more competitive for Republican candidates?

A. Well, it would change – it would have changed the entire complexion of much of the map, and it certainly wouldn't have been a configuration that would [295] have been approved by the General Assembly.

Q. And, also, do you see that Durham is included in this configuration?

A. Yes.

Q. And what district was Durham included in in the enacted plan?

A. Much of it was included – I don't know whether it was all or much of it. I would have to look in – in District 1.

MR. FARR: All right. That's all I have for now, Your Honor.

JUDGE RIDGEWAY: All right. We'll go ahead and take a recess until 11 o'clock. That's about

18 minutes from now.

(Court was in recess from 10:44 a.m. to 11:02 a.m.)

JUDGE RIDGEWAY: All right. Welcome back. It's my understanding Defendant has no further questions for this witness for the Defense.

All right. For the Plaintiff, cross examination?

MR. SPEAS: Thank you, Your Honors.

CROSS-EXAMINATION

BY MR. SPEAS:

Q. Good morning, Dr. Hofeller. I'm Eddie Speas. We've met many times over the years, and I look forward [296] to talking to you a little bit this morning about your testimony.

I want to clear up a few things to begin with. You were not actually retained by the Legislature in this case. You were retained by Mr. Farr's law firm. Is that correct?

A. Yes. I believe I said that, actually.

Q. And you have testified that you received instructions from the General Assembly with regard to drawing plans. I want to follow up on that. Actually, with regard to drawing the Senate plans, you received instructions only from Senator Rucho; is that correct?

A. I don't rightly recall if – if I received any other comments that I would consider instructional, but he

was the Chairman of the Senate Committee and hisit was his job to have the final word.

Q. And you – he is the person to whom you looked to gain your instructions with regard to the Senate plan.

A. Yes.

Q. And to the best of your memory, he's the sole source of instructions to you in drawing the Senate plan.

A. Once again, it's been two years, so I can't say that with absolute accuracy.

Q. But you do not recall any other instruction any instructions from any other member of the Senate as [297] we speak sitting here this morning.

A. If by "instructions" you mean any comments

Q. No.

A. I – I would say that – once again, I would say my testimony is that – that Senator Rucho was the final word.

Q. Okay. And he's the person who gave you instructions.

A. The policy instructions, yes.

Q. And he's the only person who gave you instructions.

A. Well, again, I – it's been two years, so I don't –

Q. Well, let's distinguish between "comments" and "instructions." I'm sure there were a lot of comments. I'm talking about who told you how to draw districts. That was Senator Rucho and Senator Rucho alone, correct?

A. That's my memory, yes.

Q. Okay. Now, let's talk about the House plan a minute. You said you received instructions from the General Assembly. In fact, the only instructions you received were from Representative David Lewis with respect to the House; is that correct?

A. He was certainly the primary giver of instructions. At some point, I had input from other [298] members; but he had the last word.

Q. And as you sit here this morning, you do not recall any other member of the House giving you any instructions with regard to the House plan.

A. Certainly in terms of the policy, the general policy of how it was to be drawn.

Q. Okay. And with regard to the Congressional plan, your instructions were from Senator Rucho and Representative Lewis jointly with regard to the drawing of that plan, correct?

A. To the best of my recollection, yes.

Q. And no other members of the House or Senate gave you instructions with regarding the – the instruction of the Congressional plan other than Senator Rucho and Representative Lewis, to the best of your memory.

A. Again, I'd have to characterize it by saying Senator Rucho and Representative Lewis had the final word on what was going to go forward or not go forward.

Q. And as between Senator Rucho and Representative Lewis, Senator Lucho – Rucho was the lead source of instructions for you with regard to the Congressional plan.

A. I don't really know that I can make that judgment one way or the other.

[299] Q. You had more contact with Senator Rucho regarding the Congressional plan than Representative Lewis.

A. If I did, it was more; but it was certainly not overarching.

Q. Now, you were – you, in fact, have said in earlier testimony in this case that it's fair to describe you as the chief architect of all three plans, correct?

A. That's one way you could put it, yes.

Q. You don't disagree with that today.

A. Well, as I would define "architect," yes.

Q. Now, let me talk just a minute about the order in which you drew the plans. Your first focus was the House plan, your next focus was the Senate plan, and your final focus was the Congressional plan – is that correct – of your map drawing efforts?

A. Yes. Could I make a comment on the last question?

Q. Please. Please.

A. Okay. I think I described "architect" in the context of an architect building a house. And the client tells them how they want the house built; the architect engineers the House.

But now to answer your question, I think I'm going to have to ask you to repeat it again. I'm sorry.

[300] Q. Okay. If I can remember it. That's the problem. But with regard to the order in which you drew the plans, you drew that – your focus – first focus was the House plan, your next focus was the Senate

plan, and then you focused on the Congressional plan. Is that – is that accurate?

A. I – I don't think that's really precisely accurate.

Q. Okay. Help me understand why it's not accurate.

A. Well, the – the three plans were not drawn consecutively.

Q. Okay.

A. We did not finish the House plan and then say, "Oh, ah ha, let's draw a Senate map now"; and, "Oh, that's done, so let's focus on the Congressional plan."

If you have redistricting experience in this setting where the state Legislature is drawing three maps, because there are 120 districts in the House plan – always a larger number of House districts than Senate districts in any state – and then the next number of districts in the Senate and then finally the fewest number in Congress – of course, unless you're in California where they have less State Senate districts than House districts, if you can believe that – the [301] complexities are actually much more difficult with the larger number of districts.

Q. Sure.

A. There are more moving parts, so to speak.

Q. Absolutely.

A. So I'm not wanting to give the Court the idea that they were being drawn one after the other. All three were going on together. But I had to put the greatest emphasis on the House map.

Q. And that's because it's the most complicated because it's got the most districts and it has the most moving parts.

A. That's correct.

Q. Okay. Now, and it would take the most effort. So, logically, it makes sense to start with the project that's going to take the most effort first; is that correct?

A. Well, that makes sense to me. It might not make sense to others because, of course, each – each group of people think their plan is more important than the other plan.

Q. I – I – I –

A. You have to deal with that, too.

Q. I – I understand that completely.

A. You've been there, I'm sure.

[302] Q. Now, your prior testimony in this case was the first thing you did was to get the data organized. And then you started your map drawing, and you started that right after receipt of the census data. Do – is my memory correct? Is it

A. I think it is, yes.

Q. Okay.

A. I do that in a lot of states because I'm wanting to know what's possible.

Q. And the census data was received, I believe, on March 22nd, 2011. Is that consistent with your memory?

A. That seems right to me.

Q. Okay.

A. It's one of the – nearly the end of the –

Q. Okay.

A. – the period which the PL94 tapes were being distributed by the Census Bureau.

Q. Okay. And let me ask this: I know you've done a lot of map drawing and you've done a lot of map drawing for a lot of years. Have you ever had the assignment of – to draw the House and the Senate and the Congressional plans for any state?

A. No. I don't think so, actually.

Q. So in some sense

A. Not that I can remember, again.

[303] Q. I understand.

A. I've drawn a lot of states in a lot of plans in a lot of decades.

Q. But as you're sitting here today, you would have to say this North Carolina project that you undertook was the biggest project you ever had.

A. You could characterize it that way, yes.

Q. Okay.

A. I had a lot more experience under my belt when I started it than I had maybe in other states.

Q. I understand.

Now, Dr. Hofeller, you did not draw these plans at the Legislative Building, did you?

A. No.

Q. None of the plans at the Legislative Building.

A. That's correct.

Q. You drew them, you testified at your deposition, in three places. One was just over here on Hillsborough Street at the Republican Headquarters. The other was at the Republican National Committee Headquarters in Washington, DC. And then you said you drew some of them while you were traveling on the plane and the train. Is that an accurate description of where you drew these plans?

A. Yes. I'd add that there were outside locations [304] where I might have drawn the plans because they were on my computer, so...

Q. Now, on direct examination, you indicated at one point that there were people sitting with you as you were drawing the districts. I want to talk about that just a minute.

Is it accurate that your two principal assistants in drawing these plans were Mr. Dale Oldham and Mr. John Morgan?

A. No. I would be in trouble immediately if I got down off the witness stand and characterized Mr. Oldham as my "assistant." He's my counsel.

Q. Okay.

A. Okay. Please.

Q. Okay. But Mr. Oldham – Mr. Oldham was your counsel in drawing these districts.

A. He was extremely interested in what was going on in the district. Mr. Morgan, I believe – although I'm not privy to it – was retained by the General Assembly, again, I believe, to assist in the Senate map.

Q. And Mr. Morgan is – I'm sorry – Mr. Oldham is a lawyer.

A. Yes.

Q. He's not licensed in North Carolina, is he?

A. You know, I don't rightly know. I – it's not [305] my business.

Q. And he's your business partner, right?

A. He is.

Q. And y'all have got a business that's located down in South Carolina, I believe.

A. That's his – his home address, yes.

Q. Okay. And Mr. Morgan is a demographer; is that right?

A. Well, I don't know how he characterizes himself. I think he does a lot of – of campaign work and he's also a – a experienced redistricting plan drafter.

Q. That – and I don't mean this in a pejorative sense, but he was one of your assistants when you were drawing these maps. He was one of the people sitting with you when you drew these maps.

A. Well, I think for the most part he was more drawing himself independently.

Q. Okay. Now, you testified at your deposition that you were the consultant for the Republican National Committee and for redistricting for the 1990s, the 2000 and the 2010 series of redistricting cycles; is that correct?

A. I'm thinking back here. I believe in the '90s, I was the consultant to the – let's see here – the [306] National Republican Congressional Committee, not the Republican National Committee. They are different.

Q. But it's fair to say that since the 19 – since 1990 or so, you have been retained in one capacity or

another to draw districts or advise with regard to redistricting for the Republican National Committee.

A. Yes.

Q. And Mr. Oldham and Mr. Morgan also have an association with the Republican National Committee, correct?

A. They do, but I – I don't really remember in 2010 whether or not Mr. Morgan actually had any contracts with the Republican National Committee in this cycle, so I'm not really privy to who retained him to do what. He does a lot of independent redistricting work on his own. Mr. Oldham also has a lot of other legal interests and does a lot more work for various clients throughout the country.

Q. And was

A. You'd really have to ask him.

Q. Yeah. Was Mr. Oldham advising you about legal matters?

A. Mr. Oldham and I have discussed many times redistricting in many different instances. Of course, part of his job and my job is to follow the redistricting [307] process across the whole nation, which is very interesting, I might add.

Q. I'm – I'm sure it is. I have no doubt.

Did – let – well, let me – let me withdraw that question.

When you were qualified to testify today, Mr. Farr asked you the question whether you know a lot about North Carolina demographics. Did – did – do I remember that correctly?

A. I don't remember precisely what he asked me. I – you – I think the record would speak for itself.

Q. And let me just explore that for a minute.

You've been to North Carolina before with redistricting and you know a lot about election data and you know a lot about lines on charts, but you don't know much about North Carolina people and places, do you, Dr. Hofeller?

A. I – I think you would have to put that in a little more context for me.

Q. Have you ever been to Yadkin County where I grew up?

A. No.

Q. Have you ever been to New Hanover County?

A. No.

Q. Do you know where it is?

[308] A. Yes.

Q. Where?

A. It's Wilmington.

Q. Okay. Have you ever been to Ashe County?

A. Yes.

Q. Have you ever been to Wilson County?

A. Yes, I have.

Q. Ah. Well, when did you go?

A. Well, actually, I have driven through there and I've gone through there on – on the train.

Q. You went – you were on 95?

A. Or I was on Amtrak.

Q. And you didn't get off the train, I guess.

A. No, I didn't.

Q. Okay. Might have stopped at the rest stop?

A. I don't believe there – well, there wasn't time for a rest stop.

Q. Is that about all you know about Wilson County, Dr. Hofeller?

A. Yes. In the context that you asked me.

Q. Okay. Now, let's – let's go back for just a minute to your source of instructions. Those instructions about the policy decisions, we'll call them, to use your term, came from Senator Rucho and Representative Lewis for all three plans.

[309] Now, my question is this: Those instructions were oral, correct?

A. Yes.

Q. While you were drawing the maps, the instructions were oral, correct?

A. Well, there were also some documents, policy documents that had been produced which I was familiar with.

Q. And – and do those

A. Let me

Q. I'm sorry for interrupting.

A. Let me continue, okay?

As the maps were unfolded, the – the – the chairmen were very interested in monitoring the process and they would look frequently at what was being drawn and the state of the completion and the plan at various times. And they would comment on the plans, which it

was my job to be very aware of and to take special notice of.

Q. I – I have no doubt that they gave you instructions.

But my question is: Those instructions were oral, weren't they?

A. Yes.

Q. They were – you did not receive any written instructions with regard to how to draw these districts [310] in any of the three plans from either Senator Rucho or Representative Lewis, correct?

A. There – there were not specific written instructions given directly to me, but there were policy statements that were publicly issued by the committees which I read and took note of.

Q. Okay.

A. And I certainly would have been cognizant of that as being part of the mandate.

Q. There is no memo or other document in written form anywhere that is addressed to Dr. Thomas Hofeller and signed either by Senator Rucho or Representative Lewis that says, Dr. Hofeller, we want you to draw these maps this way. There's no such document.

A. Not to my knowledge or recollection.

Q. And you, in fact, had an agreement with Senator Rucho and Representative Lewis you wouldn't e mail each other, didn't you?

A. My general advice to anybody in life, including redistricting, is the less you say on the Internet, the better off you are.

Q. Okay.

A. So it would not be my practice to send those in e mail fashion.

Q. I – I – I'm not questioning the soundness. [311] I'm just questioning the fact.

A. Yes.

Q. There were no e mail communications.

A. Well, I gave you all the e mail communications that there were.

Q. Okay. Okay. Now, at one point after the plans were made public for the first time, Senator Rucho and Representative Lewis did release public statements, correct?

A. Yes.

Q. And – and you are aware that

A. And I believe they – they issued public statements at the time several plans were released.

Q. Okay. And you're aware that they described those as the criteria that they wanted you to apply in drawing these districts, correct?

A. Yes. You know, it's been two years, again. I don't – don't remember exactly specifically what was are in those statements.

Q. But – but and – and it – it's your memory this morning that there were public statements in those.

A. Absolutely.

Q. Okay. And those were intended to describe the reasoning, the rationale, the policy decisions that Senator Rucho –

[312] A. I believe there was –

Q. Let me finish my question, Dr. Hofeller.

A. I'm sorry.

Q. that doctor – that Senator Rucho and Representative Lewis were following or directing you when they were drawing the plans, correct?

A. Well, it would be my understanding that when they released those statements, they were trying to explain to the public what was the policy and rationale behind the plans. They weren't written for me. They were written for the public.

Q. I understand.

A. Okay.

Q. You – you reviewed those public statements before they were released, though, I believe.

A. I don't recall that I did, no.

Q. Okay. Now, you talked a little bit about what information you had as you were drawing your districts.

I want to follow up on that just a little bit.

Now, you never conferred with anybody living in any of these districts as you were drawing the districts, did you?

A. I'm sorry. I don't understand what you mean by "these districts."

Q. Okay. Did you – do you remember going to Wake [313] County and asking anybody in Wake County about the House or Senate districts you were drawing in Wake County?

A. Okay. I – I believe again, I – I don't quite understand the context of your first question.

Q. Okay. Well, I'm sorry. I'm –

A. I'm trying to be accurate here.

Q. I –

A. Okay.

Q. And I appreciate that and let – my obligation is to be clear, so let me try.

I would think that if you were drawing a district that you would want to hear from the people in the area where the district is located before you draw the district. And – and my question is: Did you go out and talk with people in the – any of these districts before you started drawing them?

A. Well, first of all, I think it's inaccurate to infer what my – my desire would be by that question.

That question assumes a predicate that isn't true. There were public hearings that were held by the committees across the state, and that was part of the division of labor involved in bringing a plan to completion.

The political leaders would go out and consult – excuse me – with the general public. They would get the comments. They would be informed by the [314] comments and they would come back and they would then comment on it. That was not my job, nor was it proper for me to go out on my own. And, oh, by the way, I wouldn't have had time to do it anyway.

Q. Okay.

A. This is a very long and complex process, and just getting done what I got done was a big challenge.

Q. I – I don't doubt that. But what I – I simply want to know is this: No matter how big this was, no matter

how little time you had, you didn't go out and talk to anybody in any of these districts when you were drawing them, correct?

A. I didn't go out to the general public, that's correct.

Q. Now, you referenced the public hearings and there were public hearings. Did you attend any public hearings?

A. No.

Q. Did you – they did transcripts of all those public hearings, every one of them. Did you read any of those transcripts?

A. If I did, it would have only been a small portion of them. Again, I don't

Q. So all of your information as you were drawing these maps about what people were saying in North [315] Carolina about these districts you were drawing was filtered through Senator Rucho and Representative Lewis. You didn't hear directly from anybody about these maps, did you?

A. At least for the most part, yes.

Q. Now, you didn't go to any legislative committee meetings either, did you?

A. No. Except I walked through one once, as I – I believe I said in my deposition.

Q. But didn't you

A. But I didn't stop.

Q. Sort of like the train down in Wilson County.

A. I mean, not that massive.

Q. Okay. But you didn't read the transcripts of those legislative committee meetings.

A. No.

Q. Okay. Now, I want to talk to you a little bit more about your – how you and – and Senator Rucho and Representative Lewis did your work.

So would they draw sample districts and come to you and say, Dr. Hofeller, what do you think about this? Or would you draw districts – sample districts and go to them?

MR. FARR: Your Honor, may I just state an objection for the Court to consider as we're going [316] forward? This trial was supposed to be on specific topics, and we seem to be going far afield from the areas of inquiry that the Court asked the – the parties to put evidence on. And I would just ask that there be some limit to this general inquiry, which is an – and the reason, Your Honor, is why we have great concerns about the limited scope of this trial.

JUDGE RIDGEWAY: I believe the objection will be overruled. I – I am trusting Mr. Speas will tie it together in – into – into the relevancy related to the specific issues of this bifurcated procedure.

MR. SPEAS: Yes, Your Honor. I think it's important to understand the context in which these maps were drawn. The question here is whether they were narrowly tailored. And we have the mapmaker here, and it just seemed I – I – my – my intent is simply to find out what it was he had in front of him when he was doing it.

JUDGE RIDGEWAY: Yes. The objection is overruled.

BY MR. SPEAS:

Q. Let -- let me pursue what you – what you had in front of you.

MR. SPEAS: You made reference – and if I may approach, Your Honors, I'm going to ask the witness [317] about a document previously – my goodness.

MR. FARR: Your Honor, I would like to state an objection. This is not the entire exhibit.

There are quite a few pages that are not included in this exhibit.

MR. SPEAS: That is accurate, Your Honor. There are some appendices that I did not include because of the – I mean, I can postpone asking him about this exhibit, if you would prefer, until I get the entire document. They are appendices that are not related to the questions.

JUDGE RIDGEWAY: Well, let's do this. Under Rule 106 of the Rules of Evidence, if there are provisions of this document that ought – in fairness ought to be provided to the Court at this time, then at the conclusion of your discussion about this exhibit, if the Defense wishes to have additional portions either added to the record, we'll certainly hear about that.

MR. FARR: My only concern, Your Honor, what if there is something in this exhibit that would relate to the witness's ability to respond to the question?

JUDGE RIDGEWAY: Again, Rule 106, in the event that there are portions of this document that ought in fairness ought to be provided, then we'll [318] allow the Defense to – to supplement the record.

BY MR. SPEAS:

Q. Dr. Hofeller, I just want to ask you a couple of general questions about that document.

You mentioned in your testimony a few minutes ago that you were aware of policy statements that had been made by the Legislature as you began your task of drawing districts. Am I correct?

A. Yes.

Q. And is the document in front of you, the Legislators' Guide, the document to which you have reference?

A. One of them, yes.

Q. Okay.

A. This was a – this was a – a document which I believe was also published in previous redistrictings by the General Assembly when the Democrats were in control of the redistricting process and I believe was updated by the – the General Assembly staff for the current redistricting cycle.

Q. But that is one of the documents that did reflect the guidance that you received from the Legislature as you were – from the Legislature as you were doing your work, correct?

A. Yes. I read the document.

[319] Q. And would you for the record simply state the number of that exhibit. I don't think that's been done.

A. I believe it says, "46E Churchill."

Q. Okay.

A. 3 20 12.

Q. That's correct.

A. Okay. Wow.

Q. Now, if you would look just briefly at the document, Dr. Hofeller, is it true that that document does describe, among other things, the legal parameters of *Gingles* claims under the Voting Rights Act?

MR. FARR: Your Honor, objection.

A. You know, I haven't read this document for two years.

JUDGE RIDGEWAY: Hold on. Hold on. Let me rule on the objection.

THE WITNESS: I'm sorry. Your Honor, I apologize.

JUDGE RIDGEWAY: Overruled. Go ahead. You may answer.

THE WITNESS: I'm sorry.

JUDGE RIDGEWAY: That's fine.

A. I haven't read this document for two years, so –

MR. SPEAS: Well, may I approach the [320] witness

A. I'd have to

MR. PETERS: – Your Honor?

JUDGE RIDGEWAY: Well, let him finish. And, yes, sir.

Q. All right. All right.

A. And I – I would have to review it both specifically as to what you're going to ask and in its entirety to make a complete evaluation of it.

Q. Okay. My question my first question is whether or not there is a section of that document that talks about the elements of a *Gingles* claim. I'm not asking you to say whether it's accurate or not. I'm just asking you whether it's there.

A. Well, I see that on page 5, it – it mentions Thorn v. *Thornberg v. Gingles*, so it is in the document.

Q. And this is one of the documents that you read in doing your work.

A. Yes.

MR. SPEAS: Now, Your Honors, if I may distribute another set of documents, hopefully, this will be more efficient.

Q. Dr. Hofeller, I've put in front of you a set of documents that have previously been identified as [321] exhibits in this case. And for – let me just say initially it is Exhibits 81, 82, 83, 93, and 94 from the deposition of Erica Churchhouse – Churchill on March 20, 2012.

Dr. Hofeller, if you would – I want to ask you the same question about each of those documents. Is that a document that you had available to you as you were deciding how to draw districts?

MR. FARR: Objection.

A. Again, I haven't seen these documents –

JUDGE RIDGEWAY: Hold on. Hold on.

JUDGE HINTON: Hold on a second.

MR. FARR: And, Your Honor, my objection is how he was deciding to draw the districts.

JUDGE RIDGEWAY: So sustained as to form.

MR. SPEAS: Okay. All right. I apologize for that.

BY MR. SPEAS:

Q. Dr. Hofeller, are – my question to you with regard to these exhibits is whether these exhibits are

documents you had before you as you were drawing districts.

A. I guess my answer would have to be to you: I have to look at the documents before I can tell you that.

Q. Would you take a minute to do that.

[322] (Pause.)

A. I'm sorry. I just –

Q. No. No. Take your time, please.

A. The data that are contained in these documents in some cases would be contained in the dataset that was compiled by the legislative staff for use in the redistricting process, specifically to be a part of the GIS system that was incorporated into Maptitude to be available on multiple levels of geography for redistricting line drawing processes. So to that extent, there's a relationship.

Also, one might in the case of two of the documents Exhibit 83, I believe, and 82 – would be the basis for making a determination on more extensive data collection, which would need to be made primarily in order to do racial polarization studies.

Q. So these documents would be relevant to questions of determinations of Section 2 obligations of the General Assembly.

A. That's your statement.

Q. Is – yes, it is.

A. Okay.

Q. Is that correct?

A. I – I think that the largest determination would be as mandated in *Stephenson* as a first step to the [323] redistricting process would be to make a demographic analysis of the state to determine where the demographics should lead you for legal conformance with *Stephenson* and the Voting Rights Act.

Q. And that's a nice transition to my next question. I – I want to ask Dr. Hofeller about another document previously introduced.

Dr. Hofeller, Exhibit 436 to your deposition on June 28th, 2012, is called a "Carolina Proportionality Chart." Do you recognize that as a document you prepared?

A. Yes. Although I haven't seen it, again, for quite some time.

Q. And you testified earlier that you put together this document in March of 2002. Is that your memory today?

A. That makes sense, yes. That – this document could not have been done before the redistricting data file had been released by the United States Census Bureau.

Q. Okay. And is it correct that this district this chart shows the number of African Americans who would need to be elected to State House and State Senate districts in order for African Americans to be said to have exact proportionality in those legislative bodies?

[324] A. I don't think I would characterize it that way at all.

Q. Well, could you – could you tell me what it shows then?

A. This shows nothing more than if you multiplied the number of districts in each chamber of the General Assembly by the percentage of, first, 18 plus any part black which we now call "Total Black" in the charts and – and in the last four columns, "Single Race" which is also a category that is in the Census Bureau times their percentage of the State's population, it would yield a proportional number of seats. And then it said – which kind of goes without staying – if you truncated the result up or down, the result of the seats.

Q. Okay.

A. That's all it says at this point.

Q. Okay. And – and did you prepare this chart at the request of Senator Rucho or Representative Lewis?

A. I don't really remember. I have to be honest.

Q. And do you remember that one of the policy decisions they made was that you should make an effort to achieve proportionality for African American citizens as you were drawing districts?

MR. FARR: Objection to the form.

A. I –

[325] JUDGE RIDGEWAY: Hold on just a second. (Judge Ridgeway, Judge Hinton and Judge Crosswhite confer.

JUDGE RIDGEWAY: All right. We're going to sustain the objection on the grounds of relevancy. The – the issue – there are two issues, and those relating to Voting Rights Act districts are whether they were drawn in a place where a remedy or potential remedy of racial polarized voting was reasonable for the purposes of preclearance or protection.

The questions that I'm hearing now relate to the number, which is not – which is a different issue than the place. And we are specifically interested in the geographic placement of Voting Rights Act districts.

With respect to the – I believe there are six non Voting Rights Act districts, that there may be broader inquiries; but – but proportion – a proportionality issue is not relevant to those six districts either.

MR. SPEAS: I – I – I appreciate that, Your Honor. It simply seemed to me that the number has a major impact on the location, and so I thought that was the reason for the questions.

JUDGE RIDGEWAY: We – we – we specifically are being very narrow in our inquiry in this [326] bifurcated proceeding specifically for the reason stated by Mr. Farr, that it would be unfair to the Defense to allow a broader inquiry when the purpose of this hearing is related to two fairly narrow issues.

MR. SPEAS: Thank you, Your Honors.

BY MR. SPEAS:

Q. Dr. Hofeller, directing you to the racial proportionality analysis or issue, you yourself, I believe, testified you did not do any racially polarized voting analysis; am I correct?

A. I did.

Q. You did do one or did not?

A. You asked I believe you asked me if I testified to that.

Q. Yeah. I'm sorry. Maybe my question – my – I heard I heard you say you did not perform any racially polarized voting analysis yourself. Did I mishear you?

A. No, you did not mishear me.

Q. So you yourself and Dr. Thomas

A. Could you ask that incidentally again, because I think that was like a double negative?

Q. Okay. Did you do any racially proportional proportionalized voting analysis yourself?

A. No.

Q. Thank you.

[327] One of your obligations you – that you said was to ensure that the plans were legal. Is that one of your obligations to your clients?

A. I think my more important role was to inform the General Assembly of what was possible and what was not possible, and the determination as to whether or not you would – I would proceed or the plans would proceed under any certain policy was a decision made by them.

Again, the – the – the demographics and and the county groupings and the populations and all the political elements of making a plan are extremely complex and difficult. And the – the chairmen obviously could not sit through that whole process; so I think it was our job to, in essence, ensure that they were completely able to make informed policy choices.

Q. Is one of the policy choices that Senator Rucho and Representative Lewis made to insulate the state from Section 2 liability?

A. I believe it was – I believe – again, I'm not the lawyer – that they were trying to insulate themselves from any liability.

Q. Did you inform the General Assembly with regard to their potential liability for Section 2 violations in each of the places where a Voting Rights district was drawn?

[328] A. That was not – again, it was my – my job to queue up the facts. They would make informed decisions based on that and other information that they received.

Q. Okay. In queuing up the facts, you did not do a racially polarized voting analysis yourself, correct?

A. I already said I didn't.

Q. All right. They and – and the only racial that you are aware of how many racially polarized voting analyses here?

A. I believe before the plan was enacted, there were two.

Q. And what were they?

A. I think one was done by Dr. Brunell and one was done by the expert for, I believe, the SCSJ or AFRAM.

Q. All right. And do you know on what date Dr. Brunell completed his racially polarized voting analysis?

A. No, I don't believe, at this point.

Q. Could it be June 14, 2011?

A. Again, I don't recall that.

Q. Okay. Do you recall whether you had Dr. Brunell's racially polarized voting analysis before you completed the draft of the VRA House and Senate districts that were released publicly?

A. Again, I – I'm – I'm not completely sure of [329] the timeline. This has been two years. I just can't say, and...

Q. But there's –

A. I – I will – I would say this is what I said before, is that all my past experience in North Carolina was that there was racially polarized voting. Indeed, I believe SCSJ made that statement in a public meeting.

And I know of no other study that ever said differently, so I was following – the policy decision was to proceed based on that basis. If something else came up that was – that made a policy change different, it could be reacted to. It couldn't go the other way around.

Q. Now, your – part of your duty was to queue up the information, to use your term, for the Legislature with respect to what it needed to know about Section 2 liability; is that correct?

MR. FARR: Objection.

JUDGE RIDGEWAY: Overruled. You may answer.

A. Again, I think you're making that more wide ranging than it was. There are – when you are drawing redistricting plans, especially when you're redrawing the whole state in the complexity we are, there are many different things you have to look at as you go along through the process.

[330] My job primarily was to guide through the – the thicket of information and try and present the information in a manner that the chairmen could understand it and could visualize it, and it would be user friendly for them, I might say. And I think that's not as wide ranging a – a job as you inferred in your question.

Q. Well, you were reading more into my question than I intended.

I would like for you to describe for the Court the information that you presented to Representative Lewis and Senator Rucho relevant to this Section 2 liability question. What did you give them?

A. Again, I gave them the information they needed on all the minority districts what was possible, where they could be drawn so that they could make an informed judgment as to how they wished to proceed.

Q. Okay. And what information did they need to make that decision?

A. They needed to know where the minority population was located – in – in what places, in – in what areas of the state – what the possibilities were of districts that could be drawn, and what the possible levels of – of the demographics of all the segments of the population were.

[331] Q. And would they need, also, to know about the degree to which African American candidates had been elected from districts?

A. It – that's really not my job to make that determination.

Q. Okay. So that was not information you gave Senator Rucho and Representative Lewis?

A. No.

Q. Now, you testified, I believe, that you thought there was racially polarized voting in North Carolina.

A. All my prior experience in this state and everything that I had heard would have led me to that conclusion.

Q. You testified in the *Shaw* case, I believe.

A. I did.

Q. And were you asked in the *Shaw* case about the presence of racially polarized voting in North Carolina?

A. *Shaw* was a long time ago, so...

Q. So you don't remember.

A. I don't remember my testimony. I do – yes. Okay.

Q. Let me show you – whoops.

Dr. Hofeller, in your dep – in your testimony from the *Shaw* case – I have the full transcript here if you want to look at it. But I put in front of you – I'm [332] sorry. It was your deposition in the *Shaw* versus James Hunt on Wednesday, December 8, 1993, at the Law Offices of Maupin, Taylor & Ellis in Raleigh, North Carolina. I have included the pages that show the counsel who were present.

And I would ask you, if you would, please, to turn to the bottom of page 231 and ask you to read beginning at line 23 on 231 – no, no. I'm sorry. I have – I have directed you to the wrong place.

If you would read – if you would go to page 233, Dr. Hofeller, and look at line 3. And were you then asked the question: Did you begin today with an opinion about whether or not there exists racially polarized voting in North Carolina? Your answer was: Yes.

Do you see that?

A. Yes, my answer was "Yes."

Q. Okay. And then you were asked:What is your opinion? And you say your opinion is that racially

polarized does – voting does exist. And then you were asked: And is it your opinion that it exists at the level as required to be shown under the *Gingles* standard? And you said – what? I think it would vary – probably vary from area to area in the state.

Is that correct?

A. Yes.

[333] Q. And was it your opinion in 1993 that racial racially polarized voting in North Carolina varied from place to place?

A. Yes.

Q. Was that – was that your opinion in 2011?

A. I think that it would be mathematically impossible and unexpected to believe that the level of polarized voting would be absolutely homogeneous throughout the whole state.

Q. And

A. That would be a foolish statement.

Q. Okay. And did you go on to testify at this deposition in 1993 that you thought racially polarized voting probably didn't exist in the Raleigh Durham area?

MR. FARR: Objection. That's a misstatement of what the testimony is.

JUDGE RIDGEWAY: Sustained as to the best evidence. If you want to read into the record that portion you're referring to or direct him to that, that would be fine.

BY MR. SPEAS:

Q. Yeah. Let me just read the question you were asked at the bottom of page 233. You were asked: Do you have an opinion as to whether you would find racially polarized voting in other portions of the state? Your [334] answer: I'm sure you would find it in other portions. I am not in a position to go through the state area by area and say that it is 90, 80, 10. Again, I've read a lot of materials that have been submitted by people with regard to these districts, and I have been for instance, I read in several papers the opinion that in the

Raleigh Durham area, there is evidently a very low degree of racially polarized voting and some people are even contending that the present district in that area would elect a black. I didn't actually see anything to back that up. It would be interesting to see how anybody else feels about that.

Was that your opinion in 1993?

A. I think you have to conclude the sentence.

Q. "But I haven't done any specific studies."

A. Thank you.

Again, I think that dovetails with the answer I gave you previously that there could be racially polarized voting throughout the entire state, but it would be an unwarranted assumption to say it was homogeneous in its level throughout the whole state.

Q. So racially polarized voting to the extent it exists varies from place to place in the state?

A. It varies, yes.

Q. And you would need to look at each part of [335] the state to decide whether it exists or not.

A. You would have to do a racially polarized voting study, yes.

Q. All right. You didn't do that study yourself?

A. I did not.

Q. And did you ever follow up on whether with your own study of whether racially polarized voting existed in the Wake County area?

A. No. Once again, it wasn't part of the – of the testimony – after the trial, there was really no need to pursue that.

Q. Dr. Hofeller, do you recall testifying in the case of Boone versus Nassau County Legislature?

A. I didn't testify.

Q. Do you recall providing an expert report in the case of Boone – Boone versus Nassau County Legislature?

A. I – I compiled an expert study, yes. And I'm not really absolutely certain – again, that was two years ago – whether or not that was actually presented to the court. I think that lawsuit might have been truncated by a higher court decision.

MR. SPEAS: If I may approach the witness, Your Honor, and hand him his report from that case.

Q. Dr. Hofeller, I've put in front of you a document marked as Exhibit 518 to your deposition on [336] August 10, 2012. It is the expert report of Thomas B. Hofeller – B. Hofeller in the case of – Boone versus Nassau County Legislature. Do you recognize that as a report you prepared?

A. Yes.

Q. And would you turn to the last page of that report and tell me the date of the report?

A. July 11th of 2011.

Q. Okay. And would you turn with me to page 31 of that report – I'm sorry – page 9 of that report, paragraph 31. Are you there?

A. Yes.

Q. I'm going to read you a sentence from your report on July 11, 2011 and ask you whether you agree with it today: Some minority districts perform for the minority when the minority voting strength is considerably under 50 percent. Although this may raise questions as to whether the racial polarization is still legally significant, other percentages – others require percentages well over 50 percent. The determining factor is the degree of racial or ethnic bloc voting and the partisan loyalty of the voters registered in the party of the candidate.

Did I read that correctly?

A. Yes.

[337] Q. And does that reflect your opinion today?

A. That reflects my opinion in this – in the context of Nassau County, yes.

Q. And in advising Senator Rucho and Representative Lewis in North Carolina, did you undertake to make any determination whether some minority districts in North Carolina performed for the minority when voting minority strength is considerably under 50 percent?

A. No.

Q. Did you yourself undertake to make any determination whether districts in North Carolina performed – some districts in North Carolina performed for minority districts at levels under 50 percent?

A. Again, that wasn't part of my task for which I was retained. I was retained to guide the plans to completion in a timely manner.

Q. So you did not provide them any information in that regard?

A. Well, I believe that information would have been available for other – other sources within – from other sources within the state. Again, as I said before, I had enough work to do getting the districts drawn with all the moving parts of that process.

Q. So you didn't – you simply didn't give them that information. It was available someplace else, in [338] your view.

A. It was not my job to do that.

Q. Okay. Do you know whether Senator Rucho and Representative Lewis undertook that analysis?

A. I think you would have to ask them that question.

Q. You do not of your own opinion – of your own knowledge know whether they did or not.

A. No.

Q. Dr. Hofeller, let me turn to a slightly different subject. You testified about Senate District 32 on direct examination. I would like to ask you some questions about that.

MR. SPEAS: And, Your Honors, I want to hand the witness a package of maps of District 32. It actually doesn't have an exhibit number on it yet. I think I need to put that exhibit number on it.

Do you know what number that will be?

MS. EARLS: Can you make it 34?

MR. SPEAS: 30 what?

MS. EARLS: Can you make it 34?

MR. SPEAS: 34.

MS. EARLS: I know I'm skipping.

BY MR. SPEAS:

Q. Senator – Doctor, I put in front of you a set [339] of maps of District 32. The first page of this document is the District 32 as first proposed in the VRA plan. Do you recognize that map?

A. Yes.

Q. And the second page is a more detailed map of that district as originally proposed. Do you recognize that?

A. It is the same map.

Q. Okay.

A. The same boundary.

Q. And the third page is District 32 as enacted.

A. Yes.

Q. And from that page of Exhibit 32, can you identify the – can you tell whether the precincts have been split or not?

A. Certainly.

Q. And if you would look at the next page, is this a – the boundaries of Rucho Senate 2 as enacted with some highways also included?

A. Yes.

Q. And the last pages of this document, Dr. Hofeller, are the split VTD report for the Senate District 32 as enacted. Do you recognize that as a VTD split report from the Legislature?

A. I think I would have to take your word on [340] whether or not it came from the Legislature or not, but I recognize it as a split VTD.

Q. Is – is one of the reports the – you can generate from the Legislature's database a split precinct report?

A. I believe so, although I never generated such a report. The legislative system is extremely slow.

Q. Now, looking at – back at the first page of Exhibit 32, Dr. Hofeller, you drew that district for Senator Rucho, correct?

A. I – I think I would characterize it as I drew it for the General Assembly.

Q. You drew it under the directions of Dr. Rucho.

A. Again, I – I would like to characterize that –

Q. All right.

A. – accurately.

Q. Okay. All right. That – that

As you drew this district, did it contain any split precincts?

A. I believe it did.

Q. Could you identify those for me?

A. I'm not absolutely certain, because I believe – I believe that Precinct 32 was split.

Q. Okay. I think

[341] A. But as the map is colored and shaded and such, I would have to – you would have to give me a minute here to trace around that group.

Q. Okay.

A. Maybe also 34, but I'm not sure.

Q. Okay.

A. It's not the best copy I've ever seen.

Q. No, it's not; and I apologize for that.

If you will look now at Rucho Senate District 32 as enacted, which is the third page, would it – would it be fair to say comparing the plan, Senate District 32 as first presented and Senate District 32 as enacted, that the final plan splits a large number of precincts?

A. I believe if you'll look on page 7, it says 43 splits. So...

Q. Now, did you revise Senate District 32 from its original form to its enacted form? Are you the one who drew the enacted district?

A. I think to be precise, yes, that – I drew the enacted district.

Q. Okay. And did you the large – did you split these precincts on your own or at the direction of the General Assembly?

A. I think, as I stated before in my testimony today, that the policy decision was made to bring the [342] racial demographics up to the level of the SCSJ district and the – the previous district, the – the

original district. And that also was complicated by the fact that the district had to be drawn at a much higher population than the SCSJ plan mainly because the SCSJ plan did not follow the dictates of the *Stephenson* county grouping criteria and also because it couldn't be drawn at a – a negative ideal population because it would drive the – the – the partner district in the – in the cluster over the allowable positive limit. In order to do that and achieve that level, those precincts had to be split.

Q. And is it true – I'm not sure that I understood your testimony – but is it true that these precincts, 43 of them, were split in order to increase the African American population in District 32?

A. To bring it up to the level that was present in the former district and in the district that was presented to us by AFRAM or SCSJ, yes, it was true.

Q. Okay. So the African American population in District 32 increased from the time it was first introduced until it was enacted; and in order to produce that increase, precincts were split.

A. It would not have been – would not have been possible without splitting those precincts.

MR. SPEAS: That – that would conclude my [343] questions of this witness, Your Honor.

JUDGE RIDGEWAY: All right. Are there other questions on behalf of the Plaintiffs?

MS. EARLS: Yes, Your Honor.

JUDGE RIDGEWAY: All right. We intend to break around 12:30 for lunch, but if you – if you need a few minutes to –

MS. EARLS: No, Your Honor. In fact, I'll try to finish by then.

JUDGE RIDGEWAY: Okay. That's fine. There's no – no rush, but I'm just –

MS. EARLS: Thank you.

JUDGE RIDGEWAY: telling you just sort of our schedule.

MS. EARLS: Thank you.

JUDGE RIDGEWAY: Go ahead, Ms. Earls.

CROSS-EXAMINATION

BY MS. EARLS:

Q. Dr. Hofeller, good afternoon. My name is Anita Earls, and I just have a few questions for you.

I want to start with the testimony you gave about Exhibit – Defendants' Exhibit 14. And this is – if you have that in front of you. I can hand up a copy if you don't.

A. Would you turn around and show that to me?

[344] Q. Yes. Defendant's Exhibit 14 is the chart you prepared with –

A. Okay. I think I have that in my stack.

Q. Thank you.

You testified that all of the yellow shaded boxes on the right hand side of the chart indicate places where precincts were split for political reasons. Is that correct?

A. Yes.

Q. And I – I just want to make sure we're clear about what kind of data you had when you split a

precinct – And so on this chart, you have, for example, in the fourth column over, the population in each split. And that's the total population in the so when you split we can, just say, look at Wake County 01 33. When you split that between Districts 4 – Congressional Districts 4 and 13, you can say there was a total of 1,842 people in the part in District 4 and 335 in the part in District 13. Is that correct?

A. Yes.

Q. But you couldn't say with you could estimate, but you couldn't say with certainty how many registered voters or how many people who voted for Obama were in that part of District 4 that you put into – or, I mean, that part of the split that you put into [345] Congressional District 4, correct? Because the data for Obama's election or for registered voters is only kept at the – at the precinct level. It doesn't go down to the census block level. Is that correct?

A. In part. The –

Q. You can make an estimate based – you can – you can make assumptions about where the voters might live within the precinct and you can make estimates, but you don't have – you don't know the exact number.

A. Again, in part. The – the GIS system, Maptitude, requires that the data be present in some form at all levels of geography, census geography.

Q. But when you go below the

A. Could I

MR. FARR: Let him finish his answer, please, Your Honor.

A. Okay. We've discussed before in my deposition how political data is allotted within VTDs, so – and –

and when you split a precinct, that is the acceptable method of handling political data throughout a redistricting field

Q. Right.

A. throughout the country. We would have a good idea of how many voters are in each side of the split by the proportion of the population that is in each [346] side of the split.

Q. But you wouldn't know whether they were registered Democrats or registered Republicans?

A. Specifically, no.

Q. Thank you.

Turning to Defendants' Exhibits these should be in the notebook – Exhibit 7 through 10, these are the series of maps that you testified you prepared.

A. Yes.

Q. I'll give you a moment to look at those.

(Pause.)

Q. You're familiar with the measure – the mathematical measures of geographic compactness that are contained in the Maptitude software, correct?

A. Yes.

Q. And how – do you – how many measures do they include in that software package?

A. I believe there's seven.

Q. And do you –

A. Once again, it's been a little while since I've had it before me, so...

Q. Seven or eight possibly and –

A. Yeah. Some of them take much longer to compute than others, as we learned.

Q. Thank you.

[347] My question to you is: I'm correct, am I not, that this – that merely measuring the distance from one corner of the district to the other is actually none of the – that's only a – a rudimentary measure of compactness and, in fact, is not any of the seven or eight measures that are contained in the software.

A. I was not presenting that information in the context

Q. I understand.

A. of a compactness report. I merely wished to – to inform the Court that the distance traversed by the district to reach the population centers that was incorporated into it was that amount of mileage, if not more, if you stayed within the district.

Now, the – the – the farthest distance between two points in a district would allow you to compute the circumscribing circle, which would be the beginning of one of the compactness measures.

Q. Okay. But if – if – to the extent that compactness is relevant to whether or not a district is a racial gerrymander or – which is part of the question for some of the districts in this case, there are seven or eight measures in – in the software that – that computes geographic compactness and none of them are this measure.

[348] A. Again, I have to repeat: This was not presented as a compactness factor at all, so I – I don't know how that's relevant.

Q. Well, I didn't ask you the relevance.

A. Okay.

Q. I just wanted to ask the question. Thank you.

Let me turn to Congressional District 12, and you talked about thematics and you talked about the layer of data that you were using when you were drawing various districts.

But isn't it true, Dr. Hofeller, that also contained in the Maptitude software program and on your screen when you're drawing districts is a box with district statistics in it, and it – when you – anytime you make a change to the district, it shows you the new composition of the district using those statistics and that those statistics would include total population, voting age population, and – and racial data?

A. It would depend upon what you put on that screen.

Q. But that is – that is –

A. Well –

Q. – available in the software.

A. – let me explain. Could I explain?

Okay. The – the district change pop up [349] which you have to ask the system to pop up. I put it on the lower – lower right. Other people put it other places, mainly to get it out of the map – gives you a listing of the summary fields that you direct Maptitude to keep when you set up the plan. So if you don't have those in the summary field selection when you are using the plan, they would not appear in that box.

So I don't want – want to imply that every piece of data that is in the – the database would be in that box; otherwise, you would spend all day going up and down

that box trying to find out what you wanted. So it's – it's a variable just as a – a thematic would be.

Q. But my question to you is: Even though the thematic that you're looking at might have political data or partisan data, it is – it is at least available to you to also have on the screen a box that shows racial data.

A. Well, just as it is available to you to change the thematic, you can change what displays within that box.

Q. All right. So you testified about the – the criteria that you were looking at in drawing Congressional District 12, and I just want to ask you about Section 5 of the Voting Rights Act. Guilford County is covered by Section 5 of the Voting Rights Act [350] and is also a county that's included in the Congressional District 12, correct?

A. It is.

Q. So I assume that you were – when – when you were drawing Congressional District 12, you were making an assessment about whether or not that district – as you were drawing it – that district would comply with Section 5 of the Voting Rights Act.

A. Section 12 is not a – a – or I'm sorry. Congressional District 12 is not a voting rights district. So the important factor there was not the compliance with Guilford County. It was the Obama percentage in the precincts.

There had been no Section 5 objection raised that I can recall to the composition of the old District 12; and the new District 12 was modeled after the old District 12, except more of Guilford County was in it. And that was a political decision, not a racial decision.

So when – in the in the – the baseline plan I guess you could call it a baseline plan when you're talking about Guilford County – in the – in the preceding redistricting, Guilford County was in three different districts, if I recall it correctly – I'm not sure, though – and no objections were raised to the Section 5 in – in the Section 5 context of any of [351] those districts, so there was no reason to really believe that it would be raised now.

Q. So is it your testimony, then, that when

A. I don't think it has been raised, obviously.

Q. I'm sorry. Are you

A. I'm sorry.

Q. Is it your testimony, then, that when you were considering compliance with Section 5 of the Voting Rights Act around the state – around the 40 counties that are covered in the state, you were only considering that where there had previously been a Section 5 objection?

MR. FARR: Objection.

JUDGE RIDGEWAY: Overruled.

A. I'm sorry. Could you ask that again?

Q. Right. When you were considering how your the district you were drawing would comply with Section 5 of the Voting Rights Act, which covers 40 counties in North Carolina, were you only considering the places where prior Section 5 objections had been raised?

A. In the context of what set of districts?

Q. The Congressional districts, the House districts and the Senate districts.

A. I – well, we were talking about the Congressional districts and now you're asking to go to [352] the – the whole map. And the answer was absolutely in – particularly in the Senate and the – the House of Representatives map – the State House of Representatives map, we were intensely concerned with makingensuring that African Americans had all the representation they were legally entitled to have, and that would include Section 5 considerations. You were asking me about Section 5 in the context of the 12th District, I believe, of the Congressional map.

Q. Well, and your answer to me was that: We did not consider Section 5 or Congressional District 12 because there had been no Section 5 objection to that district. And so my question was: Does that mean that when you were considering Section 5 compliance, you were only looking at areas of the state where there had been objections?

A. That doesn't follow. Where – I – I that – that was – my testimony, I believe, was that in the context of the 12th District and the former 12th District to which no Section 5 objection had been raised, that I can recollect, that wasn't a factor in the drawing of the district. Certainly, when the plans were submitted to DOJ, which incidentally was not my – my job, those considerations would have been made by the submitters.

[353] MS. EARLS: It's 12:00 – it's 12:30 and this might be a –

JUDGE RIDGEWAY: All right. We'll go ahead and break. And if you need to, we'll resume after the lunch recess. That's fine.

MS. EARLS: Thank you.

JUDGE RIDGEWAY: We will recess, again, for an hour and 15 minutes. So that will take us until a quarter til 2:00. We'll resume at that time.

(Court was in recess from 12:30 p.m. to 1:49 p.m.)

JUDGE RIDGEWAY: Welcome back, ladies and gentlemen.

I believe, Ms. Earls, do you have further questions for this witness?

MS. EARLS: No, I do not, Your Honor.

JUDGE RIDGEWAY: All right. Anything else for the Plaintiffs?

MR. SPEAS: (Counsel moves head from side to side.

JUDGE RIDGEWAY: All right. Redirect?

MR. PETERS: No, Your Honor.

JUDGE RIDGEWAY: Thank you, sir. You may step down.

THE WITNESS: Thank you, Your Honor.

MR. FARR: Your Honor

[354] JUDGE RIDGEWAY: Yes.

MR. FARR: we would like, with the Court's permission, to call two more witnesses. Yesterday we heard testimony from Congressman Watt about a conversation with Senator Rucho and the Court. I don't know if the Court reads the newspaper or not, but the headlines in the newspaper yesterday were reporting Congressman Watt's testimony and "Rucho doesn't take the stand." We would like to give Senator Rucho a chance to respond to Congressman Watt's testimony. And we also have a witness to that

conversation, Representative Ruth Samuelson, whom we would like to put up.

We do not think this would be lengthy, and we request in the interest of the deadlines that we have that the cross examination be limited to what the Senator Rucho and Representative Samuelson will testify about.

JUDGE RIDGEWAY: All right. Let me hear the Plaintiffs' view on that proposal.

MR. SPEAS: Just one second. Your Honor.

(Pause.)

JUDGE RIDGEWAY: Hold on just a second. Let me just confer with my colleagues.

(Judge Ridgeway, Judge Hinton and Judge Crosswhite confer.)

[355] JUDGE RIDGEWAY: Yes, Mr. Speas.

MR. SPEAS: Your Honors, I'm assuming that these two witnesses' testimony would be limited to that very, very narrow issue and these witnesses at this late date would not be permitted to expand that testimony into the areas generally relevant to the two issues y'all have designated for trial.

With one caveat we would have no objection. We have about an hour and 12 minutes left. We would request that any cross examination of these two witnesses not be counted against that hour and 12 minutes.

JUDGE RIDGEWAY: All right. Well, let's – let's do this –

Yes, sir. Mr. Farr, do you –

MR. FARR: Your Honor, we have no objection to that proposal.

JUDGE RIDGEWAY: All right. Good. We'll allow the testimony. It should be limited in scope, and I think the best way to limit it is to just simply say the cross examination will be limited to the scope of the direct. So if the Defendants expand beyond that conversation, then in all fairness, the Plaintiffs will have an opportunity to cross examine on any orders that have importance.

[356] MR. FARR: Your Honor, if – if I attempt to expand it, would you please object to my question?

JUDGE RIDGEWAY: Yes. We will.

MR. FARR: We'd like to call Ruth Samuelson to the stand, please.

JUDGE RIDGEWAY: And just for clarification, we're not going to keep time for either parties on this – on this line of questioning. I – I anticipate it will be short for both, and I think that we're doing well on our time, so we're just not going to keep time for either party. All right.

WHEREUPON, RUTH SAMUELSON, was called as a witness, having been first duly sworn, and testified as follows:

JUDGE RIDGEWAY: Mr. Farr.

DIRECT EXAMINATION

BY MR. FARR:

Q. Could you please state your name for the record?

A. Ruth Samuelson.

Q. And, Ms. Samuelson, do you happen to be a member of the North Carolina General Assembly?

A. I am in House District 104.

Q. And where is that district located?

A. Part of South Charlotte.

Q. And do you happen to know Senator Bob Rucho?

[357] A. I do.

Q. Do you happen to know Congressman Mel Watt?

A. I do.

Q. During the redistricting process and before plans were enacted, did you attend a meeting at Senator Rucho's House which included Congressman Watt?

A. I did.

Q. Could you tell the Court what you recall Senator Rucho and – and Congressman Watt discussing at that meeting?

A. We looked over a map of the proposed district, talked a little bit about where the lines were. Congressman Watt asked a few more questions for additional details. Senator Rucho said he would get the details; asked if he was okay with the plans.

Congressman Watt demurred; but indicated, you know, there was no notice

MR. SPEAS: Objection to what he indicated.

A. Okay. Said he would like more information.

JUDGE RIDGEWAY: Well, let me let me rule on that. I'm going to – I think it would be allowed for corroborative or impeachment purposes of a witness

who has already testified. It's not being allowed for the truth of the matter of what was said, but [358] for that limited purpose, so it would be allowed.

So go ahead, ma'am.

A. Indicated that he wanted some more information before he could completely commit; but in my opinion, I didn't see any problems.

MR. SPEAS: Objection.

A. Okay.

MR. SPEAS: I'm sorry. I'll withdraw that.

BY MR. FARR:

Q. All right. Representative Samuelson, did Senator Rucho make a statement during that meeting that he had been told by leadership that he needed to ramp up Congressman Watt's district so the black population would go over 50 percent?

A. No.

Q. Did Senator Rucho tell Congressman Watt that he was going to have to go out and sell this 50 percent plus district to the black community?

A. No.

Q. Did Senator Rucho make any comments during this meeting about the potential racial composition of Congressman Watt's district?

A. Not that I recall. They mostly talked about lines and precincts and that sort of thing.

[359] MR. FARR: All right, sir. That's all I have.

JUDGE RIDGEWAY: Cross examination?

MR. SPEAS: Just a couple questions.

CROSS-EXAMINATION

BY MR. SPEAS:

Q. Representative Samuelson, do you recall the date of that meeting in Charlotte?

A. No. But it was either a Friday or a Saturday.

Q. Okay. And you testified you were there, Representative Rucho Senator Rucho was there and Congressman Watt. Was anybody else there?

A. His wife – Rucho's wife may have been in the House, but I don't recall.

Q. Was anybody there with Congressman Watt?

A. No.

Q. Okay. And do you recall the time of this conversation in Senator Rucho's House in relationship to the status of the Congressional plans in the Legislature itself?

A. I'm not sure I understand what you mean by "status." I'll say process wise, I knew that this was part of the process that we had to go through on releasing the maps and that – and, as I recall, that map had been released, but we were supposed to show it to [360] him. My understanding is I was there to witness that we had followed the process to show him the map that was supposed to be shown.

Q. Now, there was more than one Congressional map. Do you remember which of the maps was on the table for discussion at this occasion?

A. What I would have called the new map. Now, there might have been the other one there, but I don't recall that it was.

Q. Do you – by "new map," do you mean "first map"?

A. Since I was not in the process of drawing all the maps, it would be whichever one needed the approval.

Q. So at the point you had the conversation, whatever the exact date, a Congressional map was – had been publicly released.

A. That's what I recall. I could be incorrect, but that's what I recall.

Q. Did you meet with Congressman Watt and Senator Rucho on any other occasion?

A. Not about redistricting. We've known each other for a long time.

Q. I – I understand.

A. Um hum.

MR. SPEAS: Thank you.

[361] JUDGE RIDGEWAY: Okay. Ms. Earls, any further questions?

MS. EARLS: No, Your Honor.

JUDGE RIDGEWAY: All right. Anything further?

MR. FARR: No, Your Honor.

JUDGE RIDGEWAY: Thank you, ma'am. You may step down.

THE WITNESS: Thank you.

JUDGE RIDGEWAY: Further evidence?

MR. FARR: Yes, Your Honor. We would like to call Senator Bob Rucho.

WHEREUPON, ROBERT RUCHO, was called as a witness, having been first duly sworn, and testified as follows:

JUDGE RIDGEWAY: Mr. Farr.

MR. FARR: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. FARR:

Q. Could you please state your name.

A. Robert Rucho.

Q. And are – Mr. Rucho, are you a member of the North Carolina General Assembly?

A. Yes, sir.I – I am a member of the North Carolina Senate.

Q. Okay. And what district are you representing?

[362] A. 39.

Q. And what county is that in?

A. Mecklenburg County.

Q. And were you the chairman of the Senate Redistricting Committee during the redistricting process?

A. Yes.

Q. Do you recall a meeting at your home between you, Congressman Watt and Representative Samuelson?

A. Yes.

Q. Can you tell the Court when that took place?

A. It was a Friday or Saturday, but it was the we released the first map of the Congressional plans on

the 1st of July, which was a Friday. So it was the Friday, the 1st of July. And then we had a meeting – a public hearing on the 7th. So what we were doing was sharing with Congressman Watt a map of his district, the 12th District.

Q. Okay. And who was present for this meeting?

A. Representative Samuelson, Congressman Watt, myself, and my wife was in the house.

Q. All right. And can you tell the Court what you recall about what you said during this meeting and what Congressman Watt said?

A. I'm sorry. Repeat that, please, sir.

Q. Can you tell the Court what you recall today [363] about what you said at this meeting and what Congressman Watt said at the meeting?

A. Well, this was a follow up meeting from one that I had earlier in Raleigh with Congressman Watt, and what we were showing him is the – the map of the district that we were presenting as part of – of that Friday release of the Congressional map, specifically on the 12th District only. That was what we had there. There was very limited information on StatPac. Some of the questions that he asked were about that. And I said, We'll be able to provide you some more in depth information, and he was comfortable with that.

Q. Okay. Do you recall any comments made by Congressman Watt?

A. Just the fact that he was interested in what we were presenting. It did achieve what he talked about from the previous meeting, and that was to pretty much keep the 12th District in the same counties as our – as what was in the 2003 plan, and that was

Charlotte Mecklenburg all the way up to Forsyth and to Guilford Guilford County.

Q. All right. Were you in the courtroom yesterday when Congressman Watt testified?

A. Yes, sir.

Q. Do you – do you recall him testifying that you [364] made a statement to him that leadership had told you to ramp the district up to so – up to a point where the black population would be over 50 percent?

A. I – I sure – I heard him say that, yes, sir.

Q. Did – did you make any comments of that nature?

A. No, sir.

Q. Did you state that you needed to sell that over 50 percent black district to the black community?

A. No, sir.

Q. Did you make any statements during your meeting with Congressman Watt with Representative Samuelson present regarding the racial composition of the 12th District?

A. No, sir. I mean, it was evident that it was as the map presented it. That's what – we were just sharing that with him as we told him we would.

Q. All right.

MR. FARR: That's all I have, Your Honor.

JUDGE RIDGEWAY: Cross examination?

MR. SPEAS: A couple of questions.

CROSS-EXAMINATION

BY MR. SPEAS:

Q. Senator Rucho, was a map there at the meeting?

A. Yes, sir.

[365] Q. And your memory is it was the first Congressional map released.

A. That was correct.

Q. And your memory is it was July 1

A. July 1 is

Q. or thereabouts.

A. July 1 is when we actually released the plan, so it was prior to that.

Q. Do you recall what the black voting age population in District 12 in the map in front of you on that occasion was?

A. It's been a long time, sir. I don't recollect – recall that.

Q. All right. Now, you had a meeting with senator – representative – Congressman Watt earlier.

A. Yes, sir.

Q. And that was in your office in Raleigh.

A. Yes, sir.

Q. Okay. All right.

MR. FARR: Objection.

JUDGE RIDGEWAY: Overruled.

MR. SPEAS: Thank you.

JUDGE RIDGEWAY: Nothing further. Ms. Earls?

MS. EARLS: No, Your Honor.

[366] JUDGE RIDGEWAY: All right. Anything further, Mr. Farr?

MR. FARR: No, Your Honor. Thank you very much.

JUDGE RIDGEWAY: Thank you, sir.

THE WITNESS: Thank you, sir.

MR. FARR: We would like to thank the Court for giving us the privilege of putting these witnesses up today.

JUDGE RIDGEWAY: Yes, sir.

All right. Is there further evidence for the Defense?

MR. PETERS: The only other thing we have, Your Honor, is the exhibits that have been offered up.

We would move most of those into evidence. I think all told, there have been 20 exhibits identified. Number 2 that's in your notebooks there is an affidavit of Raleigh Myers with some maps attached, and I believe the Plaintiffs have agreed they could stipulate as to the authenticity and the identification of those documents.

I don't – I don't want to suggest they've waived any relevancy objections or anything like that.

And then there's one exhibit, the last one that's in the notebook, is one that the witness in question did not identify, Dan Blue. Then we've had, I [367] think, seven more that we have offered up that weren't in the notebook. Six of those are the maps that I think have probably been made part of the record quite a few times now.

I can go through the exhibits one by one if the Court likes; but, otherwise, we would move admission of Exhibit No. 1, 3 through 12, and then 14 through 20.

MR. FARR: And – and, Your Honor, there is one other point.

JUDGE RIDGEWAY: Yes, sir.

MR. PETERS: Oh, yes.

MR. FARR: Do you want to take that up?

MR. PETERS: I – I – I can. Thank you for the reminder.

In the No. No. 2, the maps that were attached to Raleigh Myers' affidavit, Exhibit E there, we did – the Plaintiffs pointed out, I think on the phone conversation the other day and we agreed, Camden County on that map should not be shaded. That was a mistake in in getting the information to you. So we – we do agree with the Plaintiffs on that, that Camden County should not be shaded.

But we would move the admission of those exhibits.

[368] JUDGE RIDGEWAY: All right. Let me hear from the Plaintiffs – let's hear from the Plaintiffs, then, on the admission of Exhibits 1, 3 through 12 and 14 through 20. Any specific objections? I know you've raised relevancy objections.

MS. EARLS: I'm not standing to object, Your Honor; but I do want to be clear. If I understand right, they – they are moving to admit the maps behind – that are behind Tab 2, so that's also being

MR. PETERS: Right.

MR. SPEAS: And then on each of those maps that – that

MR. PETERS: Yes. Thank you. Thank you. I may have misspoken, because I was looking at the map that

was behind Exhibit E. But you're right, it is each of those Camden County should not be colored.

JUDGE RIDGEWAY: So, in other words, Camden County is not a Section 5 county.

MR. PETERS: Correct.

MR. FARR: No, Your Honor. It's a Section 5 county. But if you read Dr. Brunell's report, there was not enough evidence one way or the other to conclude whether there was statistically significant racially polarized voting in Camden County. So the reason why it got shaded is because it was a Section 5 county, and that [369] was a mistake because the expert did not find racially polarized voting in that county because he didn't have enough elections to look at.

JUDGE RIDGEWAY: All right. Okay. Thank you.

All right. And any – any other specific objections, other than the relevancy objection?

MS. EARLS: No, Your Honor.

JUDGE RIDGEWAY: All right. So we'll receive all of Exhibits 1, 3 through 12 and 14 through 20 into evidence. Again, the Court's operating under the presumption that only relevant and admissible evidence will be considered and will be given the appropriate weight.

MR. FARR: And, your Honor, just to confirm Ms. Earls' comment, for which I thank her, we would also like Exhibit 2 to be admitted with the maps that are attached to Exhibit 2.

JUDGE RIDGEWAY: All right. Yeah. No. 2, I skipped that. So No. 2 is admitted as well and under the same concerns.

All right. So nothing further from the Defense?

MR. PETERS: No, Your Honor.

JUDGE RIDGEWAY: All right. Rebuttal [370] evidence?

MS. EARLS: Yes, Your Honor. The Plaintiffs would like to call Dr. Allan Lichtman.

WHEREUPON, ALLAN J. LICHTMAN, PhD, was called as a witness, having been first duly sworn, and testified as follows:

MS. EARLS: Your Honor, before I begin, I would just like to request: The witness has indicated he does have a health issue. He may need to take a short break, and he'll let us know if that is necessary.

JUDGE RIDGEWAY: At any time, just let us know.

THE WITNESS: Thank you. Probably not, but...

JUDGE RIDGEWAY: At any time

MS. EARLS: Thank you, Your Honor.

JUDGE RIDGEWAY: we'll be glad to accommodate you.

DIRECT EXAMINATION

BY MS. EARLS:

Q. Would you state your name for the record, please.

A. Allan J. Lichtman.

Q. And where are you employed?

A. American University in Washington, DC.

[371] Q. And how long have you been employed there?

A. Well, 40 years; but I started when I was 9.

Q. What position do you hold?

A. I now hold the position of Distinguished Professor of History. That's actually a university, not a department, designation. There are only four of us in the university, so I feel very honored to have that position.

Q. And – and can you summarize briefly for the Court the – the relevant areas of scholarship that you have?

A. Yeah. I would say there are three relevant areas of scholarship. The first is my scholarship on the statistical and mathematical analysis of social science information, particularly political data. That goes back to the late '70s to my monograph "Ecological Inference" in the SAGE series on quantitative methods in social science. Nothing to do with ecology. It has to do with analyzing returns – like election returns – collected for units – like precincts. And that has further been developed in articles in journals such as *Social Science History, Political Methodology, Proceedings of the United States National Academy of Sciences.*

Secondary is the use of quantitative methodologies and historical methodologies to understand [372] the history and current state of American politics. Many of my books fit in that. I – I published or coauthored eight books. Among them that fit that category is my rewritten dissertation Prejudiced in the Old Politics:

The Presidential Election of 1928; a recent book, White Protestant Nation: The Rise of the American Conservative Movement – it was a finalist in the National Book Critic Circle Award – and my series of

books called – *The Keys to the White House*, which is a – a book on the history and prediction of the presidential election results that's now in its fifth edition. And I published many, many articles on that topic as well in journals like the American Historic Review, the Journal of *Social History*, the *International Journal of Forecasting*, and also the *Proceedings of the National Academy of Sciences*.

The final area would be the application of historical and social science and quantitative techniques to issues in voting rights and civil rights. I've written articles on that topic in journals such as *Evaluation Review, Journal of Legal Studies, Journal of Law and Politics*.

Q. And could you also briefly summarize your experience as an expert witness?

A. I hate to say it, but I've been an expert witness probably now in more than 80 redistricting and [373] Civil Rights cases, Voting Rights cases. I have represented Civil Rights organizations and Plaintiffs suing states and jurisdictions, and I've represented states and jurisdictions defending themselves against such lawsuits.

And I have – I don't know – four or five or six cases as well that I was involved in here within the State of North Carolina. And in 2006, Justice Kennedy in the Texas redistricting case, *LULAC versus Perry*, I was very honored to have him cite positively my testimony.

Q. If you will open that white notebook in front of you and turn to Tab 12. It's Plaintiffs' – it's actually C12 and it's Plaintiffs' Exhibit 12.

A. All right. I see my CV there.

Q. Is that a current CV and a list of cases that you've testified in?

A. Probably current at the time I gave you. It may not be immediately current now. My book FDR and the Jews is accepted for publication; it's now been published and extensively reviewed.

And let me look at the table of cases.That will be the major change in the CV. And the table of cases is pretty current, except for I was involved in two cases in DC, District Court, three judge court in Texas for the redistricting case and the voter identification [375] case.

MS. EARLS: Your Honor, to save me asking many more questions about his background and experience, I would move that for admission of Plaintiffs' Exhibit12.

MR. FARR: We – we don't object, Your Honor.

MS. EARLS: And I would ask the Court to recognize Dr. Lichtman as an expert in voting rights, the statistical analysis of political data, and American politics.

JUDGE RIDGEWAY: Any objection?

MR. FARR: No, Your Honor.

JUDGE RIDGEWAY: His testimony will be received as proffered, and Exhibit No. 12 is received into evidence.

MS. EARLS: Thank you, Your Honor.

BY MS. EARLS:

Q. Dr. Lichtman, did you review the report of Dr. Brunell in this case datedor about North Carolina dated June 14th, 2011?

A. Yes.

Q. Did you also review the affidavit of Dr. Brunell that was filed in this action around December 10th, 2012?

[375] A. I did.

Q. And have you had an opportunity to look at the deposition transcript of Dr. Brunell's deposition taken in this action on June 7th, 2012?

A. Yes.

Q. From Dr. Brunell's June 14th, 2011 report, can you tell us what elections he analyzed?

A. Well, primarily, he analyzed for 51 counties though he doesn't report the results for all 51 on his county by county analysis the 2008 statewide Democratic Primary for president, 2008 statewide general election for president, and the 2004 state auditor. And then he also examines a handful of local elections, more of them than not state legislative; but also some other elections, such as county commission and sheriff.

Q. And what methods did he use?

A. He used two methods, and I won't go too much into the technical details. But the first method is known as "ecological regression," like my book *Ecological Inference* from the '70s extensively discusses that methodology. And it is simply a way of taking into account, say, for a given county all of the precincts voting precincts within that county.And what you're doing for each precinct, you're matching election returns with some measure of the racial composition of the [376] county; say the percent black in – among voters.

And the way Dr. Brunell does it, he basically dichotomizes the election. He breaks it in two. So it's percent black and what he calls percent white; but percent white also would include some others, some Hispanics and – and other groups who are too small and too scattered to estimate simply. That's a standard way of doing it. That was done in Thornburg versus *Gingles*. It's I – I do it myself.

And what the ecological regression methodology does, then, is compare, say, the percent black in a precinct with a percent vote for the black candidate.

And on the basis of that comparison, it comes up with a prediction equation that estimates the vote for the black candidate based upon the percentage of blacks voting for that candidate and the percentage of whites voting for those candidates.

And from those estimates, you come up with overall – with a little bit of algebra, you come up overall with – in a given election – say, in a given county or across the whole state – with the percentage of African American voters voting for, let's just say, the black candidate, the African American candidate and the percentage of white voters voting for the African American candidate.

[377] The other method is to isolate certain precincts. This is called "extreme case" or "homogenous precinct analysis." You pick out precincts that are, say, 90 percent African American and precincts that are 90 percent white, and you simply look at the actual election results in those precincts. The advantage is you are just looking at election results. The disadvantage is you're only looking at a very select number of precincts within the broader universe of precincts.

But if you have done it all correctly, the ecological regression results and the extreme case results should line up. And if they don't, there should be warning bells.

Q. Did you review his approach to racially polarized voting?

A. I did.

Q. And what did you find?

A. I found it was a half approach. That is, I didn't object to it as far as it went; but it was very far from telling you the complete and needed story of racially polarized voting wherever you might analyze it. And I've done this in scores of – of jurisdictions across the country.

Dr. Brunell looks for whether racially [378] polarized voting is present and whether it is statistically significant. So it is present if he finds, say, in a given election, in a given county or in a given district that the preferences of black voters and the preferences of white voters are different; put it again really simply, in a black/white election. So you would have racially polarization if a majority of the black voters voted for the black candidate, but a majority of the white voters voted for the white candidate.

It would be statistically significant – and it's one of those terms that, you know, conveys more than it really carries. "Statistically significant" simply means that it is unlikely to get the results merely by chance or random processes alone. You wouldn't get these results if you just threw the precincts up in the air and let them fall where they may.

It says nothing about the true political significance of racially polarized voting. And that's always where

the real analysis lies, but that's exactly where Dr. Brunell's analysis stops. And that is, we have to look at the question of white bloc voting. And this is the famous third prong of the three prong – *Gingles* standard which has been the hinge of almost every one of these cases for redistricting that I've been involved with in the past 10 or 15 years. And that is: Is white [379] bloc voting usually sufficient to defeat the African American candidate of choice?

You could have statistically significant racially polarization. But even in districts with very small percentages of African Americans, they may not be politically significant in the sense I just described.

For example, you could have 90 percent of African Americans voting for the African American candidate and 49.9 percent of the white voters voting for the African American candidate, and that could be a statistically significant difference and that would count as racially polarized voting under Dr. Brunell's limited standard. But, of course, even for very low percentages of African Americans in a district, a 49.9 percent white crossover vote with a 90 percent African American cohesion would never be sufficient to defeat the African American candidate of choice.

So what you need to do then is for a given level of African American voting age population in a district, you have to figure out at that level: Is white bloc voting usually sufficient to defeat the African American candidate of their choice?

And here Dr. Hofeller and I completely agree. He testified – and I think this is the wisdom among virtually every expert in this field – there is no magic [380] number.

MR. FARR: Your Honor, can I be heard for a second?

JUDGE RIDGEWAY: Yes, sir.

MR. FARR: I – I have to object and move to strike this testimony. This is a rebuttal witness. I don't recall Dr. Brunell testifying during the course of this case, and the testimony is all directed towards

Dr. Brunell. There is no testimony that I've heard so far rebutting anything that Dr. Hofeller testified to. And – and this – this is supposed to be a rebuttal witness responding to evidence that we put in during our case.

If – if this was the testimony they intended, it should have been put on in their case in chief, not held in reserve as a – what I would say a "phony rebuttal witness." This is evidence that should have come in when they were putting on their case. He's not rebutting Dr. Hofeller here. It's got nothing to do with the testimony the Defendants put on.

JUDGE RIDGEWAY: All right, Ms. Earls.

MS. EARLS: Your Honor, yes. Wedesignated this witness as rebuttal, not – not – to all of the evidence that the Defendants have designated on these issues. They have designated and repeatedly [381] referred to the – Dr. Brunell's report, Dr. Block's report, and that – Dr. Brunell's deposition. Those are designated – that's designated material, and this witness is – we are offering this witness to rebut that material.

JUDGE RIDGEWAY: The objection is overruled. Go ahead.

MR. FARR: Thank you, Your Honor.

THE WITNESS: Thank you Your Honor.

JUDGE RIDGEWAY: Yes.

THE WITNESS: I'm just about to wrap this part up.

A. So Dr. Hofeller and I agreed – and I think every expert in the field would – that there's no magical number that – you know, you can't say you have to draw 50 percent or 40 percent; rather districts well under 50 percent could, in his words, perform for African American voters, or in my words, provide them reasonable opportunities. Or in some cases, it may require more than 50 percent, which is why we were always instructed to do a searching practical inquiry.

Q. Okay. So then based on your – you and Dr. Brunell's report and the numberon his numbers, did you find politically significant racially polarized voting as you just described the difference between [382] "statistically significant" and "politically significant"?

A. Yeah. What – what I did was I looked at whether or not based on his numbers there was politically significant racially polarized voting in a district that was constructed at 40 percent African American voting age population. And I did an analysis to see whether or not based on his measures of African American cohesion and white crossover voting what kind of success you could expect for the candidate of choice of African Americans in a district that was 10 points below 50 percent voting age population.

Q. And did you prepare a chart based on his number that would help you explain this review that you did?

A. I did. Okay.

MS. EARLS: Your Honor, may I approach?

JUDGE HINTON: Yes.

MS. EARLS: Your Honor, may I approach the witness?

JUDGE RIDGEWAY: Yes, ma'am.

Q. I'm handing you what's been marked as Plaintiff's Exhibit 33 and it – would using that chart help illustrate your testimony?

A. I – I think it does. It's based solely on on Dr. Brunell's numbers and his description of those [383] numbers in his December 2012 affidavit, which corrected an error in his original report. And it focuses on the two general elections that he looked at county by county, 2008 president and the 2004 state auditor.

I focused on general elections because they're quite different from primaries. In primaries, African Americans are 95 percent Democratic. Whites in North Carolina tend to lean Republican. And so Democratic Primaries with any appreciable degree of African American voting age population in a district is going to be overwhelmingly black in its voters.

In the 2008 primary statewide – there is only 21 and change percent black voting age population Barack Obama won the primary 56 percent of the vote. According to the 2008 exit poles, 33 percent to 34 percent of the voters were African American compared to just 21 percent. So the real rub comes in the general elections where both African Americans and – and whites are participating.

And so, as I explained before, using Dr. Brunell's methodology and numbers, the vote for the black candidate is simply the sum of the black vote and the white vote at some given level of voting age population. I also very conservatively presumed here equal turnout for blacks and whites so that a 40 percent

[384] black VAP district would be a 40 percent black voter district.

And that's conservative, because exit poles going back to 2008 show there's now higher African American participation in North Carolina elections than white participation. This has been a big story. It's been in the New York Times and all over about how African American turnout across the South has reached and in many cases surpassed white turnout. So it's a conservative presumption of equal turnout.

And so a 40 percent black voting age population district translates into a 40 percent black voter district. And so to estimate the expected vote for the black candidate of choice, you would take the black cohesion number, which is the percent of black voters for candidate of choice, multiply it by 40 percent; and then take the white crossover, multiply it by 60 percent and add the two numbers together.

Before I get to the bottom line, one more little nuance here.The next to last column says, "Minimum Number of White Voters for Candidate of Choice of Black Voters," and there's a simple reason why it's minimum. If you look down the previous column, "Percent of Black Voters for Candidate of Choice," you see a lot of 100s because this is just the result you got from [385] Dr. Brunell's numbers. But a lot of those estimates are actually more than a hundred. Even though we know not more than 100 percent of the black vote can go to the black candidate, the estimation procedure, as Dr. Brunell did it, sometimes gave you 110 percent.

So let's say there are 10,000 black voters. And if you're estimating the votes for the black candidate from the black voters at 110 percent, you're going to

get an extra 1,000 votes. You can't have 11,000 votes being cast for the black candidate from 10,000 black voters. So where do those extra 1,000 votes come from? You can't subtract them from the candidate, because the candidate gets what the candidate gets. That's just an election return. They have to come from the white voters.

So whenever there's a hundred, these estimates of white crossover should be higher because some of the vote that is actually ascribed to black voters for the black candidate actually comes from the white voters. I didn't readjust. I simply used the minimum numbers here.

So using this procedure, here's what we find. The final column for each of these counties, which are counties of interest that counsel told me were identified by this Court that were also analyzed by Dr. Brunell – in some cases, there are stars, because Dr. Brunell did [386] not do those counties; but he did most of them. There's only one district – one county, ratherthat's – it ironically happens to be the first one, and I always mispronounce these names – Beaufort where you're getting a projection in a 40 percent black VAP district of less than a majority vote for the black candidate of choice of the black voters.

If you look down the list, in every other instance, the projection is over 50 percent. In 77 percent of the cases, almost 80 percent, it is over 55 percent. And on average, you just average this out; including the Beaufort one, the average is 58 percent. And so what this shows is based on Dr. Brunell's numbers alone, not only give African Americans a fair chance to elect candidates of their choice, but quite a good chance to elect candidates of their choice. You don't need to draw 50 percent black VAP districts. You could draw

districts that are below 50 percent black VAP, but at 40 percent or above. And, remember, I'm using the lowest end of the range; 40 to 49.9, I'm using the 40. If I used the middle of the range, all of these numbers would go up.

So this is the kind of searching practical inquiry that's called for and explains why you can't just look at the abstract polarization numbers and draw [387] conclusions about prong three of *Gingles* from them.

Q. Just a couple more questions about your the – this – this Plaintiffs' Exhibit 33. Am I right that the counties listed in the very first column are the counties that Dr. Brunell listed in his report that he was – that those were the 51 counties of interest that he indicates?

A. Yes. With a couple of caveats. One, he didn't do all 51; and, two, there are some counties listed here that the Court was interested in that Dr. Brunell didn't do. Like Davidson has stars – three stars next to it. So I – I – I couldn't include that simply because there was no ecological regression results from Dr. Brunell in those counties. But it's most of the counties that the Court is interested in.

Q. And did you find any other corroboration, then, for the – the conclusions that you draw from the – from this chart in Dr. Brunell's report?

A. I did. Another way of looking at it would be to do an analysis that incorporates all the counties as a whole. It's not a county by county, but it kind of gives you a sum of what it looks like statewide for these counties.

However, Dr. Brunell did not in his report include ecological regression results for all the [388] counties

he was interested in when you put them together statewide as a single entity, but he did report homogenous precinct results. And there's a lot of them, because, you know, you're putting all the counties together that are 90 percent plus African American and 90 percent plus white. And he did report that for both the 2008 general for president and the 2004 general for auditor, and they're almost identical. Pretty remarkable, two elections held four years apart for utterly different kinds of offices.

In both cases, the African American cohesion is about 97 percent and the white crossover for the candidate of choice of the African American voters is about 40 percent. So if you apply those two numbers to a 40 percent VAP district, again, under the conservative assumption of equal turnout, you get a projected vote for the African American candidate of their choice taking into account all of the data in a 40 percent black voting age population district of 62.5 percent.

So it does corroborate what we found county by county. Again, you're getting majority results for the African American candidate of choice and a 40 percent African American VAP district.

Q. Now, I – I – I do want to ask you if you – I mean, this – your chart was based on his numbers. But [389] did you have any issues with his analysis of American cohesion or – or, put another way, the extent to which black voters support the same candidates?

A. I did. And I believe he issued about a year and a half later an updated affidavit in which he caught the problem with black cohesion in his first report, but it – it's an important problem because the second

affidavit came long after the redistricting process was completed here.

Q. And the –

A. And the first report, I believe, came June 14th before the adoption of the final plans here in North Carolina.

Q. And what was the problem there?

A. Yeah. Can I

THE WITNESS: Your Honor, can I use –

Q. Would it help you to illustrate your testimony to be able to –

A. Yes.

Q. Okay.

JUDGE RIDGEWAY: Yes.

THE WITNESS: Okay. Thank you.

A. So, remember, I said in an ecological regression analysis – it would really help to have a marker.

[390] JUDGE HINTON: Behind you.

Q. They're on the ledge.

A. Ah, thank you.

But you get – you're estimating the percent just to say, again, the vote for black candidate, but the black versus white two person election, the percent for African American candidate. And you're analyzing this precinct by precinct. And this is a function of a simple linear equation, a straight line through the precincts where you have a constant turn – like any line, there's a constant, the point at which it starts, and a slope. Okay. And the slope is B times X. And I'll explain this all.

X is the percent black in a precinct. So when there were no blacks, X is 0. Multiply anything by 0, you get 0. And you get A, the constant term, which is the percent of white voters voting for the black candidate when there are no blacks.

But you can get an actual example for Robeson County that Dr. Brunell did in his second report affidavit. So he got a constant term of 38 percent. So that means when there are no blacks and only whites, 38 percent of whites voted for the African American candidate. This was the 2008 presidential general. And he got a number of .6 times X. That is for every 1 [391] percent increase in the black percentage, you would get a 6/10 of a percent increase in the vote for the African American candidate.

So if we multiply this by 100 where there are only blacksso it's an all black, all African American vote – we get 60 percent. So the increase over where there is 0 blacks to where there are all blacks is 60 percent. So we expect the black vote for the black candidate to be 60 percent – or this is really percentage points – higher than the white vote. So it's going to be 60 percentage points higher than 38 percent or 98 percent. That's the black cohesion, and 38 percent is white crossover.

What Dr. Brunell did until corrected in his December of 2012 report, he misinterpreted this as the black cohesion number, failing to add on the constant term or the 38 percent. This is the increase going from 0 black to 100 percent black, not the black vote for the black candidate, and he explained that in his second affidavit – affidavit.

This is of profound importance because, again, in assessing whether there is politically significant white bloc voting – that is white bloc voting to usually defeat

the African American candidate of choice – it makes a big difference whether African Americans are [392] voting at 60 percent or at 98 percent. If they're voting at 98 percent, much lower white crossover is needed to elect the African American candidate of choice; if they're voting at 60 percent, much more.

Let me give you the example. So if we have a – again, a 40 percent African American, 60 percent white district. So the African American vote is 60 percent. You multiply that by 40 percent. You should get 24 percent. Right? So that would mean 26 percent would have to come from the white side. That's not going to happen if we multiple .38 times 60 percent, which is the white vote. It's 23.

So we would only project a 47 percent vote. And we would say, Wow, even in a 47 VAP black district, the white crossover – the white bloc vote is sufficient to defeat the African American candidate of – of their choice; or put it another way, the crossover isn't great enough. But if the real cohesion is 98 percent, it's up to 23; but if we multiple 40 times 98, we get 39, and we're now up to 62 percent.

So it makes a huge difference to do this properly. And so his first analysis greatly understated the ability of African American voters to elect candidates of their choice in districts that are considerably below 50 percent African American voting age [393] population.

MS. EARLS: Before you continue, Your Honor, just to preserve the record, I would like to mark this as a Plaintiffs' exhibit.

JUDGE RIDGEWAY: Yes, ma'am.

MS. EARLS: And I think that means this would be marked as Plaintiffs' Exhibit 35.

BY MS. EARLS:

Q. So I – I – just to make clear that you what implications did – does this error have, then, for his analysis?

A. The implications are that it's going to look like you need higher percentages of African American voting age population in the district to give African Americans a reasonable opportunity to elect candidates of their choice than you really do when you use the correct and much higher numbers for black cohesion.

Q. Did you have an issue with his estimates of white crossover?

A. Yes. And I think I already explained that. I'll just briefly allude to it again. In about 80 percent of his instances, you're getting estimates of black cohesion of over 100. That can't be. Those excess votes supposedly coming from black voters actually have to be coming from white voters for the black candidate,

[394] and that means that white crossover in all of those instances to some degree or another is underestimated and that the – the effect is the same. Once again, it magnifies the percent African Americans one might think you need in a district to give African American voters a reasonable opportunity to elect candidates of their choice.

Q. Now, separate and apart from these issues that you've identified, what – were there – was there anything incomplete about Dr. Brunell's analysis?

A. Yes. I think there was a good bit that was incomplete. First of all, he chose for analysis 51

counties. I believe there are about 100 counties in North Carolina, so about half the counties were left out of the analysis. And for some reason or another – and I'm not sure. He wasn't clear on it – he didn't analyze all 51 either. Maybe he just didn't have the – the data he needed in the – in the others. But the – the big point is he picked about half the counties.

Q. And did he explain in the report why he picked those 51 counties?

A. Well, between the report and the depo, I think

I got the explanation fairly clearly. He was asked to do these 51 counties. And he didn't just go out in the world and decide on his own, These are the 51 counties I [395] want to look at. And as he explained it, particularly in his deposition, he was asked by the Legislature to look at 40 Section 5 counties and 11 additional counties in which wholly or partly they believed they could draw African American voting age majority districts.

Q. Now, I want to ask you to look hold this thin notebook that should be on the witness stand in front of you. It – it looks like there's one right there –

A. Thank you.

Q. – but it's the Defendants' exhibits.

A. I have it, I think.

Q. And could you turn to Tab 2E?

A. Yep.

Q. Now, this is a map that's been offered by the Defendants and the title the heading says, "Counties confirmed by Dr. Block or Dr. Brunell as experiencing statistically significant racially polarized voting in Senate Districts."

And you may have heard earlier, the Defendants did stipulate that Camden County should not have been shaded on this map because Dr. Brunell's report explicitly says he couldn't he did not find statistically significant racially polarized voting in Camden County.

[396] MR. FARR: Objection. That's not what the report says. The report says that he couldn't find it one way or the other because of the lack of election results.

BY MS. EARLS:

Q. Okay. So my question to you, Dr. Lichtman, is: Are there any other inaccuracies with this – with and – with regard to this map?

A. Well, I'm not sure what you mean by "inaccuracies"; but, you know, if you want me to comment broadly on the issues I see with this map, I will.

Q. Yes, please.

A. The first issue I see is tied to this map and to Dr. Brunell's testimony. In other words, before they saw this, before they had any data on racially polarized voting from their experts updated to recent elections, given the selectivity here, and so many counties left out and Dr. Brunell saying it was the covered counties plus counties where they thought they could draw majority VAP African American districts, they had kind of already made up their mind on how they wanted to draw the districts before they saw the data. And that ties into my second problem, of course. It's all the white spaces. It may well have been based upon if Dr. Brunell had looked at those counties, I suspect given the way he defined [397] racially polarized voting, most of those counties would have

been shaded in as well and there would really be no distinction.

My third problem is: Note when it says "statistically significant." That doesn't mean it's politically – you know, I went through an explanation of the differences. That simply means it's not likely to be the result of chance. It doesn't mean it's big enough white bloc voting is big enough in any of these counties to usually defeat an African American candidate of choice.

My next problem and maybe this is an inaccuracy is there are a number of counties based upon Dr. Brunell's report that don't belong here that are – either do not show a pattern of racially polarized voting or don't show racially polarized voting at all based on his numbers.

Let me go through the general elections first. Beaufort doesn't belong. He found racially polarized voting by his standard, that is white and black voters voting for different candidates in only one of two elections. We've already eliminated Camden.

In Durham, he found racially polarization voting in his limited sense of African Americans and white voting for different candidates in only one of [398] three elections he looked at. I think it might be instructive to look at Durham, because that does show it's a big county, and it – it doesn't belong here.

If you look at Dr. Brunell's second reports, the affidavit of December 10th, I believe, 2012, and if you look at the paragraph 7, 2008 presidential general election – and it's Table 2 – and you run your finger down to Durham, you see the white crossover vote; the "constant" he calls them. But that's the white vote for Obama. The white vote for the black candidate is 59.4

percent. By no definition is that polarized voting. The black cohesion is actually a little over 100 if you add the 41.3 and the 59.4. So Durham is certainly not polarized in that election.

And if you go to the next table, the state auditor table, which is Table 3 on page 7, and you go down to Durham, you see 50 percent of the white voters are voting for the African American candidate who is the candidate of choice of African American voters.

He does look at one other general election in Durham that does show by his standards racially polarized voting. But in two out of three of the elections he looks at, it's not there, and this should not be a shaded county.

In Gates County, he only found it in one of [399] two; in Robeson, in one of three; and in Lee, in one of two. Primary elections, same problem with Durham; in this case, only one of two. Forsyth doesn't belong there. Let me illustrate that. And, again, this is based on his interpretation in his first report, which is the only one that they had until December of 2012 when the redistricting process was long over.

In Forsyth, the way he interpreted black cohesion in his first report, only 47.7 percent of African American voters voting for the African American candidate, and the white crossover was 45.3; so they favored the same candidate.

Guilford, Greene, and Mecklenburg don't belong in here either based upon primary elections.

Now, this also cites Dr. Block, but Dr. Block did not do it county by county. Dr. Block only looked at Congressional, State House and State Senate Districts, but did not parse out the counties. Plus, Dr.

Block's report does not provide backing for racially polarized voting in North Carolina. In over 60 percent of the elections he looked at, African Americans and whites voted the same way. So the chart is not only uninclusive, but too inclusive in what it has shaded here.

Q. And if you look at the map behind Tab F and Tab [400] G of that Exhibit 2, the same those just superimpose different sets of districts, but the same criticism of the what's shaded what the counties where

A. They look the same to me.

Q. Right. So they would be the you would have the same issues with those two maps as well.

A. All of the same issues.

Q. All of the same issues.

A. Did you ask me to look at G as well? I –

Q. Yes. Well, the three – all three.

A. Yeah. They're all the same.

Q. Now, in addition to the fact that his analysis only looked at 51 counties and he was looking at the Obama 2008 primary and the general election, am I right that – that the data would be available for – for – for every county in North Carolina because the election returns were available for every county?

A. Absolutely. I don't understand why he excluded some counties

Q. Yeah.

A. except he was asked – this was what he was asked to do.

Q. So other than that issue, was there anything else that was incomplete about his analysis?

A. Yes. Another thing that was incomplete about [401] his report was the other elections that he chose to look at. He chose to look at a handful, maybe 10 elections, in counties and in districts.

And the problem was I could not discern any scientific selection criteria for why he picked the elections he did and why he excluded many, many others. Dr. Block analyzed scores or more State House, Congressional, and State Senate districts, which are what we call endogenous elections. They're the on point elections in this case. Most of those were not analyzed in the Brunell report and yet other elections such as the sheriff and county commission were analyzed.

He also tended to focus on 2010, which is, you know, as we know, a very good Republican year. 2008 was a good Democratic year. So to balance it, it would have been, I think, wise to look at both.

And, in fact, in a couple of cases, he looked at 2010 elections and didn't look at 2008 elections involving the very same African American candidate. That's Don Davis in North Carolina State Senate District 5 and Floyd McKissick in North Carolina State – State Senate District 20. He analyzed the two 2010 elections, but you also had a 2008 election in those same districts involving exactly the same candidates. And based upon at least Dr. Block's results, neither of those 2008 [402] elections were polarized.

Q. Can – can I ask you just briefly, so you did review Dr. Block's report.

A. I did.

Q. And what did his analysis show?

A. Well, as I said, the great majority – more than 60 percent – of the elections he looked at, they weren't polarized at all. And in many of the other elections he looked at, the polarization was minimal with white crossover being over 40 percent, sometimes close to 50 percent.

And, finally, he compared success rates for African American candidates in majority minority districts and no majority minority districts. And that's not a useful comparison, because the category "no majority districts" is going to include districts 10 percent, 20 percent, 5 percent minorities. So it – it – you know, I – I don't think that comparison, you know, really provided any additional information.

Q. So turning back to Dr. Brunell's report, was there anything else that was incomplete in that?

A. I haven't quite finished.

Q. I'm sorry.

A. That's okay. I was kind of in the middle.

So those – that's an example of two elections [403] with the same candidates in two different years that he didn't analyze; and the ones he didn't weren't polarized, at least according to Dr. Block.

He also reached back for one election back to 2006, and that's in House District 60. And yet, in fact, there was a 2010 election in House District 60 which he didn't analyze. And, again, according to Dr. Block's report, that election was not polarized. Both candidates both whites and blacks had the same candidates of choice.

Not only was there a very small number of elections analyzed with no clear rationale, in cases where you're dealing with the same districts and even the same candidates in some cases, there was a high degree of selectivity which affected his conclusions.

Q. Dr. Lichtman, in light of our limited time, I want to ask you to – with regards to Dr. Brunell's report, does his report show the results of the elections?

A. No. And this is really important. There's no way of assessing whether racially polarized voting is in the sense politically significant meeting the prong three of *Gingles* without knowing the outcome of elections and without knowing the African American composition of the counties or the districts in which those elections [404] occurred. None of that information is presented in the Brunell report, so we – we don't have a bottom line here.

Q. Did you do any analysis that looked at the outcome of elections?

A. I did.

Q. And – and what did you do?

A. I took information that was publicly available to everyone; and that is, I looked at House, Senate, and Congressional existing districts. And I looked at, where possible, two sets of districts – those over 40 percent African American VAP, but under 50 percent African American VAP, and if available, those that were 50 percent or more African American VAP – and I simply looked at who won those districts. And I looked at both 2008 and 2010 to get in recent elections and to get in one good Democratic year and one good Republican year so we're not tilting the analysis.

And I also did one other thing, and that is I just made sure when there was a contest that – whether or not the winning candidate was actually the African American candidate of choice. And that –

Q. Doctor –

A. Yeah.

Q. I'm sorry. Would you turn to the white [405] exhibit notebook, the larger notebook

A. Sure.

Q. – in front of you and look at Plaintiffs' Exhibit 20, which is behind – behind Tab C20.

A. Yep. I got it.

Q. Now, is there a table that you prepared

A. Yes.

Q. that will help you explain?

A. Yes. That reflects the analysis I was just discussing for House districts. And this first table looks at House districts that were 40 percent or more existing House districts – African American voting age population, but under 50 percent African American voting age population. And there were 11 such districts. One was a little ambiguous, but I counted it here because based on 2010, although not 2000, it was under 50; and my two elections are closer to 2010. And what I found was –

Q. Excuse me. When you say "existing," you meant before the 2011 redistricting?

A. That is correct.

Q. Thank you.

A. That is correct.

And what I found was there are 11 such districts, so it's a reasonably good sample. And in 10

[406] of the 11 districts, African American candidates of choice of African American voters prevailed. That is black candidates won 10 of 11 of these districts and won all general and primaries or there was no contest in generals and/or primary elections. That is a win rate for African American candidates in districts at this level of 91 percent.

The only exception was in House District 102 where a white candidate prevailed in all elections, and that white candidate was not the candidate of choice of African American voters.

So then the second step I did, you also had a reasonable sample of House districts prior to the current redistricting that were 50 percent or more African American in their voting age population, and there were 10 such districts. I guess that's the very next table. It's labeled Table 2.

Q. And that's Plaintiffs' Exhibit 21?

A. Yes. And here African American candidates prevailed in 8 of 10 elections. That's an 80 percent win rate, 11 percentage points below the win rate for African American candidates in districts that were 40 percent or more African American VAP, but below 50 percent African American VAP.

If you add in House District 27 where you had a [407] white candidate winning who was also the African American candidate of choice – an African American candidate of choice could be white – then the win rate goes up to 90 percent comparable to the 91 percent win rate for the lower level districts, and that win rate was solely for African American candidates.

Then I did the same analysis for the Senate, and I think that's Tab 22.

Q. And exhibit Plaintiffs' Exhibit 22.

A. Yes. Now, for the Senate, we don't have districts that are 50 percent or more African American VAP for the previous round of redistricting, so I could only look at those districts that were 40 percent or more African American VAP but below 50 percent. I didn't have the comparative basis like I did for the House.

And I found 8 such districts, and African Americans prevailed – African American candidates prevailed in 6 of those 8 districts for a win rate of 75 percent. When you add in, as I did for the House, 50 percent plus black VAP districts, a white candidate who was the candidate of choice of African Americans, then the win rate for candidates of choice of African Americans in these districts goes up to 88 percent.

And, by the way, I believe that that white candidate of choice was the same former state senator, [408] Senator Garrou, who testified here in – in – in the courtroom.

And then, finally, I looked at Congressional. And, again, we didn't have any Congressional districts in the prior redistricting that were at the 50 percent or higher level; but we did have two at the 40 to 50 percent level. And in all cases in all elections, African American candidates who are candidates of choice of the African American voters prevailed for a win rate of 100 percent.

Q. And that's reflected on Plaintiffs' Exhibit 23?

A. Yes. And finally I put it all together.

Q. Your Honor – I'm sorry. Dr. Lichtman, before you do that –

A. Okay.

Q. I want to ask you a couple more questions.

A. Sure.

JUDGE RIDGEWAY: But let me, before you do that, just – the clerk informs us that you have probably a little less than 25 minutes for the Plaintiffs' case, according to our ground rules.

MS. EARLS: Thank you, Your Honor.

THE WITNESS: Does that mean I should speak faster?

BY MS. EARLS:

[409] Q. In front of you I believe there is a document that has previously been that that Mr. Speas handed up – it's – it's this it's labeled "Erica Churchill – Exhibit 81." It's the next – it's the big – it's a big packet with a binder on it.

A. Yes.

Q. And – and I just want to ask you to look

I'm going to focus on a particular election just to – so you can have – tell us about the data that's there. And if you wouldn't mind, in thein that clip is a packet of actually several exhibits from that deposition, and the in the second packet is Exhibit 82. So if you look at – it's Senate –

A. I don't know what you mean by "the second packet." This one?

Q. No, no. In the same – it's –

A. I see it. I got it.

Q. Okay. And if you could go about, it's roughly 28 pages into that packet and look at the page that's headed "2006 Senate District 40."

A. Good luck in finding it. These pages are not numbered. I'll try to find it. I got it.

Q. Okay. If you look at the data that appears there, does that – is that the kind of data that you relayed on – relied on in the analysis that you just [410] took us through?

A. Yes. It's the same data. In other words, it gives you the racial composition of the district and tells you whether the winner is black or white. You don't need me to compile this or even make those little tables. You know, it – it's self evident data, public data available well before the redistricting process.

Q. So then what did you find when you put together the House, Senate and Congressional election returns that you analyzed for 2008 and 2010?

A. Yes. With respect to districts that were under 50 percent black VAP, but 40 percent or more – there were 21 of them – and African American candidates prevailed in 18 of 21 for a win rate of 86 percent. If we add in Senator Garrou as an African American candidate of choice who isn't African American, then African American candidates of choice in these districts prevailed 19 of 20 – 19 of 21 districts – House, Senate and Congressional – for an overall win rate of 90 percent.

Q. Okay. You – I also would like you to look at Plaintiffs' Exhibits 24 to 27. And I am not going to ask you to explain them all in light of the time remaining, but could you just look at those and tell us if those are tables that you prepared?

[411] A. They are tables I prepared, and the first two are extremely simple.

Q. What do the first two show you?

A. They simply look at the existing districts, that is the ones before the current redistricting, and the enacted districts and they simply look at for the House and the Senate districts with some con – with some concentration of African Americans at least 30 percent or more.

And the bottom line is – is in the last column; and that is, if you look at the districts that were created in the enacted plan that had really any appreciable degree of African American concentration, 26 of them, 23 of the 26 – almost all of them – were drawn at the 50 percent or above black voting age population. That – that can't be an accident. That has to be a you know, a design within this districting process which was also corroborated by the testimony I previously recounted from Professor Brunell.

The second Table 6, Plaintiffs' Exhibit 25, does the same thing for the Senate. There are 10 districts that are 30 percent or more African American voting age population, and 9 of the 10 were drawn above the 50 percent African voting age population mark.

Q. Thank you.

[412] MS. EARLS: Your Honor, at this time, I would like to move admission of Exhibit 12, which is – I think you admitted his CV, perhaps. So I – I – need to move admission of Exhibits 20 through 29 and Exhibit 33 and Exhibit 35.

MR. FARR: Your Honor, just subject to our previous objection about the – our view that this witness should

not have been allowed to testify, we have no objection to the introduction of these exhibits.

JUDGE RIDGEWAY: All right.

MS. EARLS: And – and – and, Your Honor, just to be clear, Exhibit 29 is the Exhibits 28 and 29 are affidavits of Dr. David Peterson. I was still trying to take care of everything all at once. He – previously we had agreed he could –

MR. FARR: We've already agreed to that, Your Honor.

JUDGE RIDGEWAY: All right. So 20 through 29, 33 and 35 are received into evidence subject to the relevancy objections that were raised previously and the presumption that this Court is operating on regarding considering only admissible and relevant evidence and assigning the appropriate weight thereto.

All right. So they are received.

MS. EARLS: I have no further questions [413] for this witness.

JUDGE RIDGEWAY: All right. Cross examination?

MR. FARR: Yes, sir.

CROSS-EXAMINATION

BY MR. FARR:

Q. Dr. Lichtman, my name is Tom Farr. Somehow we've missed each other over the last 30 years.

A. It's hard to believe.

Q. I'm looking at the Plaintiffs' white notebook.

A. This one? This big trial notebook?

Q. Yes. I'm looking at your – it's your CV.

It's Exhibit 12. And I want to ask you about your list of cases

A. Sure.

Q. – if you can find that, please.

A. Okay.

Q. First of all, have you worked before with any of the attorneys who are here today?

A. Yes. I've worked with Mr. Speas and Ms. Earls.

Q. Have you worked with them in North Carolina cases before?

A. I believe they were North Carolina cases.

Q. Okay. And do you do you recall when the legislation at issue here was enacted? Would you [414] would you disagree with me if I said it was July 2011?

A. That's my understanding.

Q. Okay. Did you submit any of the comments or opinions or testimony to the General Assembly of North Carolina before July of 2011?

A. No.

Q. Did you have any discussions with any of the lawyers who are here today about submitting comments to the General Assembly?

A. No.

Q. Okay. So your affidavits that you've filed in this case and your testimony here today were not in front of the General Assembly when they enacted the plans at issue?

A. No. But a lot of the information that I presented was.

Q. But your opinion of the information wasn't in front of the General Assembly?

A. That's correct.

Q. Okay. Now, you – you got a lot of cases listed here. I think you said there were about 80.

A. That's an approximate count. I'm not sure I've had every case I've been in listed here, but it's most of them.

Q. Okay. Are you a registered Democrat?

[415] A. Yes.

Q. Have you run for office as a Democrat?

A. Very unsuccessfully.

Q. And you ran for the U.S. Senate

A. Yes, I did.

Q. in Maryland; was that right?

A. Yes.

Q. Did you get arrested during that campaign?

A. I did for a political demonstration, and I was fully acquitted on all counts.

Q. Okay. Let me ask you about the cases you have listed here. In any of these cases that you've listed, did you were you testifying on behalf of a Republican candidate?

A. Yes. I think I – I don't remember the case, but I worked for the Republican Massachusetts Republican Redistricting Task Force Committee in the 1990s. And I don't think it's listed here as a case, but it's listed in my CV. My longest project in recent years has been for the Republican mayors of New York City, Rudolph Giuliani and Michael Bloomberg back when

he was a Republican. I was the redistricting adviser for their Charter Review Commission that was trying to transform New York City elections into nonpartisan elections, and our biggest opponents by far were the Democratic – [416] activists on the Democratic Party, which greatly benefited from partisan elections because New York City is so overwhelmingly Democratic.

Q. Okay. And out of all the – these cases you have listed, are there any others where you've testified on behalf of a Republican?

A. There probably are, but I frankly, I'm not even sure in most of these cases necessarily what the the political composition was. I know I testified against the Democratic government of Maryland, my home state, on a motor voter case. I'm not sure who brought the case, but it was against a Democratic state, a Democratic governor, and a Democratic General Assembly.

Q. Let's talk about redistricting cases such as this one. How many of those types of cases have you testified on behalf of a Republican?

A. I can't say because a lot of them I don't know, you know, the partisan composition of those who were involved necessarily. So I – I – I – I can't answer that question.

Q. Okay. But nothing comes to mind today?

A. Well, I think I mentioned a few things already.

Q. But

A. Beyond that...

Q. in a redistricting case.

[417] A. I think the Republican Redistricting Task Force was a redistricting matter.

Q. That's in Massachusetts?

A. Yes.

Q. Okay.

A. And other than that, I'm just not sure.

Q. All right. I wanted to ask you

A. Oh, I think well, – DeGrandy vs. Wetherell, yeah. I sat with kind of Tom Hofeller's counterpart. I forget – the redhead guy. I forget his name. Maybe you can refresh me. He was head of their redistricting task force, and we were on the Republican side in the big DeGrandy vs. Wetherell case that became the Supreme Court case.

And the reason for that was Florida's got an interesting situation. Particularly back then, most of the Latinos in Florida were Republican. So I believe I was testifying on behalf of Latinos and also working with the Republicans on that case. So, you know, now that I think about it, there – there are some others.

Q. Okay. Were you a witness in thein connection with the Congressional plan that was enacted in Illinois –

A. Yes, I was.

Q. – in 2011?

[418] A. You're talking about the most recent?

Q. Yes, sir.

A. Yes, sir.

Q. And what was the nature of your testimony there?

A. Well, there was a lot of testimony there. Part of the testimony was the same kind of testimony I'm giving here, and that is was there politically significant white bloc voting sufficient to defeat the in this case it was Hispanic candidates of choice

Q. Okay.

A. in districts or jurisdictions at a given level. And my bottom line conclusion was in a lot of districts and jurisdictions that were not majority Hispanic, the white bloc vote was not sufficient. I also testified on that was in the Congressional case.

I also testified on the state side not in live testimony, but in reports, because that was decided on the summary judgment; and my analysis was that they had not demonstrated – again, the same point, that in the districts they were challenging that white bloc voting was sufficient to usually defeat the Hispanic candidates of choice. There were a lot other complicated issues that I testified about as well, including exactly how districts were crafted, whether districts were racially [419] gerrymandered, particularly a Congressional district in Chicago.

Q. So is it fair to say you testified in support of a plan that was ultimately enacted?

A. Yes. And that the Court upheld in both cases.

Q. Okay.

MR. FARR: Your Honors, I would like to distribute some exhibits

JUDGE RIDGEWAY: Yes.

MR. FARR: related to the Illinois Congressional plan.

THE WITNESS: Can I put this away? Can I put this away?

(Pause.)

BY MR. FARR:

Q. Dr. Lichtman, does Exhibit 21 appear to be a statewide map of the 2011 Illinois Congressional plan?

A. It appears to be; but it's been a couple of years since I looked at a plan. But I'll take your word for it. I'm not going to quibble.

Q. Okay. Is Exhibit 22 kind of an area map of the Congressional plan in Chicago?

A. I can't that's a little harder to verify, because you're now dealing with pretty fine points of geography, and I cannot verify that as I sit here.

[420] Q. Are you familiar –

A. It looks similar. But whether it's the same, I can't say.

Q. Okay. And are you familiar with the so called "earmuff district" in –

A. I am.

Q. And on Exhibit 22, could does there appear to be a version of the "earmuff district"?

A. Yes. But I don't know whether that's the old version pre 2010 or the new version post 2010.

Q. Could you – what – on this particular exhibit, what number is assigned to the "earmuff district"?

A. Four.

Q. And why was it called the "earmuff district"?

A. Well, you know, districts take on colloquial names to identify them easily; and it's called an "earmuff" because in one construction, it could look like an earmuff.

Q. Okay. And is that a majority Hispanic district?

A. Yes. But wait, wait, wait. That's a difficult question, because there are three levels in which you would analyze it.

Q. Well, sir

[421] A. Let me finish.

Q. Okay.

A. Yes. It's majority Hispanic total pop. Yes, it's a majority Hispanic VAP, but not probably Hispanic majority citizen voting age population. There's a huge dropoff in the City of Chicago between voting age population and citizen voting age. So citizen, it's probably not a majority Hispanic citizen voting age population district.

Q. And, Dr. Lichtman, hasn't that district been challenged before on the grounds of being a racial gerrymandering?

A. Well, not this exact district.

Q. An earlier version.

A. Earlier versions that are similar, but by no means identical.

Q. Right.

A. Very important differences between assuming this is the current district and I have no idea and previous. And a lot of my testimony was focused on those differences.

Q. Okay. But some – an earlier version of this that looked kind of like this district was upheld in the case where it was challenged as a racial gerrymander?

A. I believe that's correct.

[422] Q. And in that case, did the Court not find that all the *Gingles* preconditions were present?

A. I don't recall. It's a 1990s case. I – I – I – I don't recall.

Q. All right. Are you familiar with the political impact of – of the 2011 Congressional plan in Illinois?

A. Not for the whole state, but generally.

Q. Did were you aware there were five or six Republican incumbents who were drawn into the districts with other incumbents?

A. I don't know the number, but I know there was some.

Q. And were you aware that either five or six Republican incumbents were defeated in the 2012 general elections?

A. I don't know the exact number, but it was something in that range.

Q. Okay. All right. Now, I wanted to turn to the black notebook.

A. The thin one?

Q. Yes, sir. This is the Defendants' note exhibit notebook, and go to tab let's go to Tab E.

A. I'm there.

Q. And do you recall testifying about this map when under direct examination?

[423] A. I do.

Q. Now, Dr. Lichtman, your – I – I agree I you're a common, well known expert and I'm – I'm glad to meet you finally.

A. Are you setting me up for something here?

Q. Of course, I am. I doubt that – I doubt I'll be successful, but I'm going to try.

And you're familiar with the demographics in North Carolina?

A. Not intimately, no. I mean, I – I know the population percentages and things of that nature. But, no, I haven't drawn any North Carolina plans or anything like that. So, no. And my testimony is not about that.

Q. Okay. Well, you – you testified about this map and you

A. But not in terms of the demographics; in terms of the counties included and excluded and the racial polarization. I did not testify about the racial composition of – of – of – of counties in North Carolina.

Q. But did you not state that there was you can see no reason why there had not been a polarization study done in the white counties, or words to that effect?

A. I think if you're going to do a polarization study, you should not exclude counties, yes.

[424] Q. Okay. Do you know whether – let's – looking at the white counties, the ones that are not shaded, do you know if North Carolina has ever enacted a majority black or a majority minority coalition district in any of those white counties since the *Gingles* case?

A. I don't know, but that's not the standard I would use.

Q. Well, I know it's not the standard you would use; but do you know whether there has been any districts enacted in those white counties that are either majority black or minority borders?

A. That touch upon any of those white counties, I do not know.

Q. Okay. And do you know whether there are any pockets of African American population in any of those white counties that would be sufficiently numerous to form a majority in a compact district?

A. They might in combination with other counties. Lots of districts, you know, include more than one county.

Q. Well, what what counties would those be?

A. I don't know. That's why I said "might."

Q. Okay. All right. I want to ask you, given your testimony, do you think it would be legally permissible for North Carolina to – well, let me start [425] over.

Do you know what the statewide voting age population is for African Americans in North Carolina?

A. I think it's a little over 21 percent.

Q. Okay. Do you think it would be legal for North Carolina to draw all of its Legislative and Congressional districts at a black voting age percentage of 21 percent?

A. I think I'll leave the legal issues to the judges. But it's not what I would recommend if I was asked to

be the redistricting adviser, like I have been in other states.

Q. And why wouldn't you recommend that?

A. Because it may well be that you need a higher percentage than 21 percent to provide African Americans a reasonable opportunity to elect candidates of their choice.

Q. So – so for – for African Americans to have a reasonable opportunity to elect their candidate of choice, you believe that they have to have a black percentage in – in the district that's higher than what the statewide average is in North Carolina.

A. I haven't looked at the statewide average; but from what I've looked at, the answer – in – in a given district, the answer is yes.

Q. Okay. Bear with me for a second.

[426] A. Sure.

Q. Let me see if I've got one of the exhibits or let me see if I can just ask the question.

You – you showed us some charts and tables about the win rate for African Americans in districts that were between 40 percent and 49 percent.

A. I did.

Q. Can you tell me all of the data that you looked at in making that calculation?

A. I looked at census data, election returns for the district and precinct by precinct election returns.

Q. So you looked at the census data and you looked at the election returns?

A. Yes.

Q. And precinct by precinct information?

A. Yes. And, of course, the racial identification of the candidates.

Q. All right. Did you look at anything else?

A. Precinct by precinct demography, too; the breakdown of African Americans and whites in the precincts.

Q. Okay. And is that it?

A. Yes.

Q. Nothing else?

A. I don't believe so. Not as –

[427] Q. Okay.

A. – to the best of my recollection.

Q. All right. Now, I'm going to try to find your affidavit in this notebook, the first affidavit.

All right. Dr. Lichtman, it's – it's Tab 13 in the white notebook.

A. Okay.

Q. Okay. Could you turn to paragraph 13?

A. Okay. Now, this is not the same affidavit from which those tables were taken. I just wanted to make that clear.

Q. What's that, sir?

A. This is not the same affidavit from which those tables were taken.

Q. Okay. I – I – that's all right. I just want to ask you –

A. Okay. I just want to make that clear.

Q. I just want to ask you to read your testimony.

A. Sure.

Q. Okay. Could you – could you read into the record paragraph 13?

A. Tables 4 and 5 show the results of creating 50 percent plus African American districts for State House and State Senate districts. As compared to the benchmark [428] of the existing plan, the state proposed plan for State House needlessly packs African Americans into districts greater than 50 percent black in their voting age population. The result is to diminish substantially the influence of African American voters in other House districts. As indicated in Table 4, the existing benchmark State House plan has 32 districts that are 30 percent or more black in their voting age population compared to 26 in the state passed proposed State House plan. As indicated in Table 5, the existing benchmark State plan has 15 districts that are 30 percent or more black in their voting age population compared to 10 in the state proposed – the state –

Q. Okay.

A. – proposed State Senate plan.

Q. All right, sir.Now, were you here for the the testimony with Dr. Hofeller and the testimony about this proportionality chart that he

A. I heard it, but I didn't see any of the exhibits. I didn't follow it real well.

Q. And since you were a witness in the – in the DeGrandy case, do you understand what the term "proportionality" means?

A. I do.

MR. SPEAS: Your Honor, I'm going to have [429] to object to this line of questioning. Proportionality was not deemed relevant for Hofeller and I don't see how it's relevant here.

MR. FARR: Well, I

JUDGE RIDGEWAY: Mr. Farr, I have sustained the objection there. Are – are you bringing it back to a point that's

MR. FARR: Yes, sir, if you would give me a chance.

JUDGE RIDGEWAY: Okay. Go ahead.

MR. FARR: All right. Thank you.

BY MR. FARR:

Q. So could you tell the Court what is meant by "proportionality"?

A. Well, in – in – in the most limited sense, that is, it is simply taking the African American, let's say, voting age population and seeing how many districts in a given plan Congress, State House, State Senate would be represented by that percentage. So if you have 100 districts and the African American VAP is 20, proportionality is 20. It's a simple mathematical calculation.

Q. All right. So – and did you hear Dr. – I think Dr. Hofeller's chart stated that in the House, the proportionality might be 24.

[430] A. I don't know. I did not see his chart.

Q. Well, let's – let's take – if you would accept my word for that, I think that's what it says.

A. I will accept your word that his chart says that, sure.

Q. All right. So you talk about in the old House plan, there were 32 districts that were above 30 percent black?

A. That sounds right.

Q. And that would be above proportionality if proportionality in North Carolina would be 24 House seats; is that not correct?

A. 32 is higher than 24, yes.

Q. All right. And you talked about African Americans having a reasonable opportunity to elect in a 40 to 50 percent black voting age district in your affidavit; is that right?

A. That's right.

Q. So – so, Dr. Lichtman, if they have a reasonable opportunity to elect in a 40 to 50 percent district, would it not follow that they would have a reasonable opportunity to elect in a district that was above 50 percent black?

A. Yes.

Q. And in paragraph 13

[431] MR. FARR: And, Your Honors, I won't ask him to read paragraph 14 into the record, unless we need to.

Q. But is it not true, Dr. Lichtman, that you state in your affidavit that the injury to African American voters by drawing the districts up to 50 percent is it decreases their influence in surrounding districts?

MS. EARLS: Objection, Your Honor. I think – I think this goes beyond the issue that's before the Court, which is whether these districts were located in

the right place, not the injury that – that the Plaintiffs suffered.

MR. FARR: Your Honor, it goes to impeaching the expert witness here.

JUDGE RIDGEWAY: It – it seems like that we're – we're spending time on proportionality, which is one of not it's not one of the issues before the Court. I'll allow you to ask limited inquiry into this but urge you to move on.

MR. FARR: I'm about finished, Your Honor.

BY MR. FARR:

Q. Do you not say in this affidavit that the result of drawing the 50 percent districts is to diminish the influence of African American voters in other House districts?

[432] A. That's only in comparison to the existing plan. There could be all kinds of other plans that, in fact, could create additional African American opportunity districts. If you reduce the percentages down from 50 percent to 40 percent, it naturally follows that you would have more African Americans to put in more districts.

Q. But influence is different than having an opportunity to elect in Voting Rights' terminology; isn't that correct?

A. Yes. That's why I gave the answer that I did. You can create more 40 percent plus districts.

Q. Between the between the 2011 enacted plans and all the 2011 alternatives, do you know which plans have the highest number of districts that are 40 percent or higher?

A. I haven't looked at any alternative plans.

Q. Okay. And – and the – the harm caused by the enacted 2011 plans as compared to the 2000 pair of plans is that drawing the districts up to 50 percent has decreased the influence of African Americans in adjoining districts. Is that not –

A. I don't think I used the word "harm." I simply said that is a result. I think, obviously, you got to compare it with other alternatives as well to really [433] assess what the harm is.

MR. FARR: Okay. Your Honor, if I can just look at my notes for one second

JUDGE RIDGEWAY: Yes.

MR. FARR: I think I'm about finished.

(Pause.)

MR. FARR: I think that's all I have, Your Honor.

JUDGE RIDGEWAY: Will there be redirect? We're going to take a break before that if there is; but, otherwise, is there redirect?

MS. EARLS: No, Your Honor.

JUDGE RIDGEWAY: Okay. Is there anything else, other than questions by way of cross examination or anything else for this witness?

MR. FARR: No, Your Honor. I've – Dr. Lichtman has convinced me he's quite the expert.

JUDGE RIDGEWAY: All right. Thank you. Okay. Very good. Thank you, sir. I believe you may step down now.

THE WITNESS: Thank you, Your Honor.

JUDGE RIDGEWAY: Further rebuttal evidence?

MS. EARLS: No, Your Honor.

JUDGE RIDGEWAY: Okay. Re rebuttal?

[434] MR. STRACH: No.

JUDGE RIDGEWAY: All right. With that then would conclude the evidence; as – am I understanding that?

All right. Are there any closing remarks that either of you wish to make in the time that you have remaining? Again, we will certainly invite written closing arguments to be submitted at the same time as your proposed findings of fact, which I believe that's next Tuesday at 5 o'clock, if I recall the order correctly.

MR. PETERS: Your Honor, on behalf of the

Defendants, we're content to put anything in writing.

JUDGE RIDGEWAY: All right. Very good.

MS. EARLS: We will do the same, Your Honor.

JUDGE RIDGEWAY: Okay. Very good. All right. I believe, then, we can conclude today's hearing. Thank you very much for the excellent presentations. We appreciate it. I will look forward to receiving proposed findings of fact and your concluding remarks in writing next Tuesday.

We're in recess.

(Court concluded on Wednesday, June 5, 2013 at 3:36 p.m.)

(VOLUME II OF II.)

CERTIFICATION OF TRANSCRIPT

This is to certify that the foregoing transcript of proceedings taken at the June 5, 2013 Special Session of Wake County Superior Court is a true and accurate transcript of the proceedings taken by me and transcribed by me. I further certify that I am not related to any party or attorney, nor do I have any interest whatsoever in the outcome of this action.

This 23rd day of June, 2013.

/s/ Ranae McDermott

RANAE McDERMOTT, RMR, CRR
Official Court Reporter
131 Saint Mellion Drive
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